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**DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS SIXTY-FIRST SESSION**

**Rapporteur: Ms. Marie G. JACOBSSON**

**CHAPTER V**

**RESERVATIONS TO TREATIES**

**Addendum**

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

**1. Text of the draft guidelines**

123. The text of the draft guidelines<sup>1</sup> provisionally adopted so far by the Commission is reproduced below.

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<sup>1</sup> At its 2991st meeting, on 5 August 2008, the Commission decided that, while the expression “draft guidelines” would continue to be used in the title, the text of the report would simply refer to “guidelines”. This decision is purely editorial and is without prejudice to the legal status of the draft guidelines adopted by the Commission.

## RESERVATIONS TO TREATIES

### Guide to practice

#### Explanatory note<sup>2</sup>

Some 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 reservations<sup>3</sup>

“Reservation” means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

##### 1.1.1 [1.1.4]<sup>4</sup> Object of reservations<sup>5</sup>

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.

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<sup>2</sup> For the commentary see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10 (A/58/10)*, p. 189.

<sup>3</sup> For the commentary to this guideline, see *ibid.*, *Fifty-third Session, Supplement No. 10 (A/53/10)*, pp. 196-199.

<sup>4</sup> The number between square brackets indicates the number of this guideline in the report of the Special Rapporteur or, as the case may be, the original number of a guideline in the report of the Special Rapporteur which has been merged with the final guideline.

<sup>5</sup> For the commentary to this guideline, see *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10 (A/54/10)*, pp. 210-217.

### **1.1.2 Instances in which reservations may be formulated<sup>6</sup>**

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 scope<sup>7</sup>**

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

### **1.1.4 [1.1.3] Reservations formulated when notifying territorial application<sup>8</sup>**

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 author<sup>9</sup>**

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.

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<sup>6</sup> For the commentary to this guideline, see *ibid.*, *Fifty-third Session, Supplement No. 10* (A/53/10), pp. 203-206.

<sup>7</sup> For the commentary to this guideline, see *ibid.*, pp. 206-209.

<sup>8</sup> For the commentary to this guideline, see *ibid.*, pp. 209-210.

<sup>9</sup> For the commentary to this guideline, see *ibid.*, *Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 217-221.

1.1.6 Statements purporting to discharge an obligation by equivalent means<sup>10</sup>

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 jointly<sup>11</sup>**

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

**1.1.8 Reservations made under exclusionary clauses<sup>12</sup>**

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 declarations<sup>13</sup>**

“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.

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<sup>10</sup> For the commentary to this guideline, see *ibid.*, pp. 222-223.

<sup>11</sup> For the commentary to this guideline, see *ibid.*, *Fifty-third Session, Supplement No. 10* (A/53/10), pp. 210-213.

<sup>12</sup> For the commentary to this guideline, see *ibid.*, *Fifty-fifth Session, Supplement No. 10* (A/55/10), pp. 230-241.

<sup>13</sup> For the commentary to this guideline, see *ibid.*, *Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 223-240.

### **1.2.1 [1.2.4] Conditional interpretative declarations<sup>14</sup>**

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 jointly<sup>15</sup>**

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

## **1.3 Distinction between reservations and interpretative declarations<sup>16</sup>**

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 declarations<sup>17</sup>**

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.

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<sup>14</sup> For the commentary to this guideline, see *ibid.*, pp. 240-249.

<sup>15</sup> For the commentary to this guideline, see *ibid.*, pp. 249-252.

<sup>16</sup> For the commentary to this guideline, see *ibid.*, pp. 252-253.

<sup>17</sup> For the commentary to this guideline, see *ibid.*, pp. 254-260.

### **1.3.2 [1.2.2] Phrasing and name<sup>18</sup>**

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 prohibited<sup>19</sup>**

When a treaty prohibits reservations to all or certain of its provisions, a unilateral statement formulated in respect thereof by a State or an international organization shall be presumed not to constitute a reservation except when it purports to exclude or modify the legal effect of certain provisions of the treaty or of the treaty as a whole with respect to certain specific aspects in their application to its author.

## **1.4 Unilateral statements other than reservations and interpretative declarations<sup>20</sup>**

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 commitments<sup>21</sup>**

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.

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<sup>18</sup> For the commentary to this guideline, see *ibid.*, pp. 260-266.

<sup>19</sup> For the commentary to this guideline, see *ibid.*, pp. 266-268.

<sup>20</sup> For the commentary to this guideline, see *ibid.*, pp. 268-270.

<sup>21</sup> For the commentary to this guideline, see *ibid.*, pp. 270-273.

**1.4.2 [1.1.6] Unilateral statements purporting to add further elements to a treaty<sup>22</sup>**

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-recognition<sup>23</sup>**

A unilateral statement by which a State indicates that its participation in a treaty does not imply recognition of an entity which it does not recognize constitutes a statement of non-recognition which is outside the scope of the present Guide to Practice even if it purports to exclude the application of the treaty between the declaring State and the non-recognized entity.

**1.4.4 [1.2.5] General statements of policy<sup>24</sup>**

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 level<sup>25</sup>**

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.

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<sup>22</sup> For the commentary to this guideline, see *ibid.*, pp. 273-274.

<sup>23</sup> For the commentary to this guideline, see *ibid.*, pp. 275-280.

<sup>24</sup> For the commentary to this guideline, see *ibid.*, pp. 280-284.

<sup>25</sup> For the commentary to this guideline, see *ibid.*, pp. 284-289.

**1.4.6 [1.4.6, 1.4.7] Unilateral statements made under an optional clause<sup>26</sup>**

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

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

**1.4.7 [1.4.8] Unilateral statements providing for a choice between the provisions of a treaty<sup>27</sup>**

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 treaties<sup>28</sup>**

**1.5.1 [1.1.9] “Reservations” to bilateral treaties<sup>29</sup>**

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.

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<sup>26</sup> For the commentary to this guideline, see *ibid.*, *Fifty-fifth Session, Supplement No. 10* (A/55/10), pp. 241-247.

<sup>27</sup> For the commentary to this guideline, see *ibid.*, pp. 247-252.

<sup>28</sup> For the commentary, see *ibid.*, *Fifty-fourth Session, Supplement No. 10* (A/54/10), pp. 289-290.

<sup>29</sup> For the commentary to this guideline, see *ibid.*, pp. 290-302.



**1.5.2 [1.2.7] Interpretative declarations in respect of bilateral treaties<sup>30</sup>**

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

**1.5.3 [1.2.8] Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party<sup>31</sup>**

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 definitions<sup>32</sup>**

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 declarations<sup>33</sup>**

**1.7.1 [1.7.1, 1.7.2, 1.7.3, 1.7.4] Alternatives to reservations<sup>34</sup>**

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

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<sup>30</sup> For the commentary to this guideline, see *ibid.*, pp. 302-306.

<sup>31</sup> For the commentary to this guideline, see *ibid.*, pp. 306-307.

<sup>32</sup> This guideline was reconsidered and modified during the fifty-eighth session (2006). For the new commentary see *ibid.*, *Sixty-first Session, Supplement No. 10 (A/61/10)*, pp. 356-359.

<sup>33</sup> For the commentary see *ibid.*, *Fifty-fifth Session, Supplement No. 10 (A/55/10)*, pp. 252-253.

<sup>34</sup> For the commentary to this guideline, see *ibid.*, pp. 253-269.

- The conclusion of an agreement, under a specific provision of a treaty, by which two or more States or international organizations purport to exclude or modify the legal effects of certain provisions of the treaty as between themselves

### **1.7.2 [1.7.5] Alternatives to interpretative declarations<sup>35</sup>**

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 form<sup>36</sup>**

A reservation must be formulated in writing.

#### **2.1.2 Form of formal confirmation<sup>37</sup>**

Formal confirmation of a reservation must be made in writing.

#### **2.1.3 Formulation of a reservation at the international level<sup>38</sup>**

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:

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<sup>35</sup> For the commentary to this guideline, see *ibid.*, pp. 270-272.

<sup>36</sup> For the commentary to this guideline, see *ibid.*, *Fifty-seventh Session, Supplement No. 10* (A/57/10), pp. 63-67.

<sup>37</sup> For the commentary to this guideline, see *ibid.*, pp. 67-69.

<sup>38</sup> For the commentary to this 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 reservations<sup>39</sup>**

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.

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<sup>39</sup> For the commentary to this 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 reservations<sup>40</sup>**

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 reservations<sup>41</sup>**

Unless otherwise provided in the treaty or agreed by the contracting States and international 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 international organizations for which it is intended as soon as possible.

A communication relating to a reservation shall be considered as having been made with regard to a State or an international organization only upon receipt by that State or organization.

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<sup>40</sup> For the commentary to this guideline, see *ibid.*, pp. 80-93.

<sup>41</sup> For the commentary see *ibid.*, *Sixty-third session, Supplement No. 10 (A/63/10)*, pp. 174-184.

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 depositaries<sup>42</sup>**

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 reservations<sup>43</sup>**

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.

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<sup>42</sup> For the commentary to this guideline, see *ibid.*, *Fifty-seventh Session, Supplement No. 10* (A/57/10), pp. 105-112.

<sup>43</sup> This guideline was reconsidered and modified during the fifty-eighth session (2006). For the new commentary see *ibid.*, *Sixty-first Session, Supplement No. 10* (A/61/10), pp. 359-361.

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.

### **2.1.9 Statement of reasons<sup>44</sup>**

A reservation should to the extent possible indicate the reasons why it is being made.

## **2.2 Confirmation of reservations**

### **2.2.1 Formal confirmation of reservations formulated when signing a treaty<sup>45</sup>**

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 treaty<sup>46</sup>**

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.

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<sup>44</sup> For the commentary see *ibid.*, *Sixty-third Session, Supplement No. 10 (A/63/10)*, pp. 184-189.

<sup>45</sup> For the commentary to this guideline, see *ibid.*, *Fifty-sixth Session, Supplement No. 10 (A/56/10)*, pp. 465-472.

<sup>46</sup> For the commentary to this guideline, see *ibid.*, pp. 472-474.

**2.2.3 [2.2.4] Reservations formulated upon signature when a treaty expressly so provides<sup>47</sup>**

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 ...<sup>48</sup>

**2.3 Late reservations**

**2.3.1 Late formulation of a reservation<sup>49</sup>**

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 reservation<sup>50</sup>**

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 reservation<sup>51</sup>**

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.

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<sup>47</sup> For the commentary to this guideline, see *ibid.*, pp. 474-477.

<sup>48</sup> Section 2.3 proposed by the Special Rapporteur deals with the late formulation of reservations.

<sup>49</sup> For the commentary to this guideline, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10)*, pp. 477-489.

<sup>50</sup> For the commentary to this guideline, see *ibid.*, pp. 490-493.

<sup>51</sup> For the commentary to this guideline, see *ibid.*, pp. 493-495.

### **2.3.4 Subsequent exclusion or modification of the legal effect of a treaty by means other than reservations<sup>52</sup>**

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.

### **2.3.5 Widening of the scope of a reservation<sup>53</sup>**

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 declarations<sup>54</sup>**

### **2.4.0 Form of interpretative declarations<sup>55</sup>**

An interpretative declaration should preferably be formulated in writing.

### **2.4.1 Formulation of interpretative declarations<sup>56</sup>**

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.

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<sup>52</sup> For the commentary to this guideline, see *ibid.*, pp. 495-499.

<sup>53</sup> For the commentary see *ibid.*, *Fifty-ninth Session, Supplement No. 10 (A/59/10)*, pp. 269-274.

<sup>54</sup> For the commentary see *ibid.*, *Fifty-seventh Session, Supplement No. 10 (A/57/10)*, p. 115.

<sup>55</sup> For the commentary see section C. 2 below.

<sup>56</sup> For the commentary to this guideline, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10*, pp. 115-116.



**[2.4.2 [2.4.1 bis] Formulation of an interpretative declaration at the internal level<sup>57</sup>**

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.]

**2.4.3 Time at which an interpretative declaration may be formulated<sup>58</sup>**

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.

**2.4.3 bis Communication of interpretative declarations<sup>59</sup>**

The communication of written interpretative declarations should be made, *mutatis mutandis*, in accordance with the procedure established in draft guidelines 2.1.5, 2.1.6 and 2.1.7.

**2.4.4 [2.4.5] Non-requirement of confirmation of interpretative declarations made when signing a treaty<sup>60</sup>**

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.

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<sup>57</sup> For the commentary to this guideline, see *ibid.*, pp. 117-118.

<sup>58</sup> For the commentary to this guideline, see *ibid.*, *Fifty-sixth Session, Supplement No. 10* (A/56/10), pp. 499-501.

<sup>59</sup> For the commentary to this guideline see section C.2 below.

<sup>60</sup> For the commentary to this guideline, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10*, pp. 501-502.

**2.4.5 [2.4.4] Formal confirmation of conditional interpretative declarations formulated when signing a treaty<sup>61</sup>**

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 declaration<sup>62</sup>**

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.

**[2.4.7 [2.4.2, 2.4.9] Formulation and communication of conditional interpretative declarations<sup>63</sup>**

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.]

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<sup>61</sup> For the commentary to this guideline, see *ibid.*, pp. 502-503.

<sup>62</sup> For the commentary to this guideline, see *ibid.*, pp. 503-505.

<sup>63</sup> For the commentary to this guideline, see *ibid.*, *Fifty-seventh Session, Supplement No. 10 (A/57/10)*, pp. 118-119.

#### **2.4.8 Late formulation of a conditional interpretative declaration<sup>64</sup>**

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 declaration<sup>65</sup>**

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.

#### **2.4.10 Limitation and widening of the scope of a conditional interpretative declaration<sup>66</sup>**

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 reservations<sup>67</sup>**

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.

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<sup>64</sup> For the commentary to this guideline, see *ibid.*, *Fifty-sixth Session, Supplement No. 10* (A/56/10), pp. 505-506. This guideline (formerly 2.4.7 [2.4.8]) was renumbered as a result of the adoption of new guidelines at the fifty-fourth session.

<sup>65</sup> For the commentary see *ibid.*, *Fifty-ninth Session, Supplement No. 10* (A/59/10), pp. 275-277.

<sup>66</sup> For the commentary see *ibid.*, pp. 277-278.

<sup>67</sup> For the commentary to this guideline, see *ibid.*, *Fifty-eighth Session, Supplement No. 10* (A/58/10), pp. 190-201.

### **2.5.2 Form of withdrawal<sup>68</sup>**

The withdrawal of a reservation must be formulated in writing.

### **2.5.3 Periodic review of the usefulness of reservations<sup>69</sup>**

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.

### **2.5.4 [2.5.5] Formulation of the withdrawal of a reservation at the international level<sup>70</sup>**

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:

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<sup>68</sup> For the commentary to this guideline, see *ibid.*, pp. 201-207.

<sup>69</sup> For the commentary to this guideline, see *ibid.*, pp. 207-209.

<sup>70</sup> For the commentary to this guideline, see *ibid.*, pp. 210-218.

(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 reservations<sup>71</sup>**

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.

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 reservation<sup>72</sup>**

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.

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<sup>71</sup> For the commentary to this guideline, see *ibid.*, pp. 219-221.

<sup>72</sup> For the commentary to this guideline, see *ibid.*, pp. 221-226.

### **2.5.7 [2.5.7, 2.5.8] Effect of withdrawal of a reservation<sup>73</sup>**

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 reservation<sup>74</sup>**

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.

## **Model clauses**

### **A. Deferment of the effective date of the withdrawal of a reservation<sup>75</sup>**

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].

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<sup>73</sup> For the commentary to this guideline, see *ibid.*, pp. 227-231.

<sup>74</sup> For the commentary to this guideline, see *ibid.*, pp. 231-239.

<sup>75</sup> For the commentary to this model clause, see *ibid.*, p. 240

**B. Earlier effective date of withdrawal of a reservation<sup>76</sup>**

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 reservation<sup>77</sup>**

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 reservation<sup>78</sup>**

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

(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 reservation<sup>79</sup>**

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.

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<sup>76</sup> For the commentary to this model clause, see *ibid.*, pp. 240-241.

<sup>77</sup> For the commentary to this model clause, see *ibid.*, pp. 241-242.

<sup>78</sup> For the commentary to this guideline, see *ibid.*, pp. 242-244.

<sup>79</sup> For the commentary to this guideline, see *ibid.*, pp. 244-256.

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 reservation<sup>80</sup>**

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 declaration<sup>81</sup>**

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

#### **2.5.13 Withdrawal of a conditional interpretative declaration<sup>82</sup>**

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

### **2.6 Formulation of objections**

#### **2.6.1 Definition of objections to reservations<sup>83</sup>**

“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

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<sup>80</sup> For the commentary to this guideline, see *ibid.*, pp. 256-259.

<sup>81</sup> For the commentary to this guideline, see *ibid.*, *Fifty-ninth Session, Supplement No. 10* (A/59/10), pp. 279-280.

<sup>82</sup> For the commentary to this guideline, see *ibid.*, p. 280.

<sup>83</sup> For the commentary see *ibid.*, *Sixtieth Session, Supplement No. 10* (A/60/10), pp. 186-202.



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 reservation<sup>84</sup>**

“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.

**2.6.3, 2.6.4<sup>85</sup>**

**2.6.5 Author<sup>86</sup>**

An objection to a reservation may be formulated by:

- (i) Any contracting State and any contracting international organization; and
- (ii) Any State and any international organization that is entitled to become a party to the treaty in which case such a declaration does not produce any legal effect until the State or the international organization has expressed its consent to be bound by the treaty.

**2.6.6 Joint formulation<sup>87</sup>**

The joint formulation of an objection by several States or international organizations does not affect the unilateral character of that objection.

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<sup>84</sup> For the commentary see *ibid.*, pp. 202-203.

<sup>85</sup> The Drafting Committee decided to defer consideration of these two guidelines.

<sup>86</sup> For the commentary see *Official Records of the General Assembly, Sixty-third Session, Supplement No. 10 (A/63/10)*, pp. 189-193.

<sup>87</sup> For the commentary see *ibid.*, pp. 193-195.

**2.6.7 Written form<sup>88</sup>**

An objection must be formulated in writing.

**2.6.8 Expression of intention to preclude the entry into force of the treaty<sup>89</sup>**

When a State or international organization making an objection to a reservation intends to preclude the entry into force of the treaty as between itself and the reserving State or international organization, it shall definitely express its intention before the treaty would otherwise enter into force between them.

**2.6.9 Procedure for the formulation of objections<sup>90</sup>**

Guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 are applicable *mutatis mutandis* to objections.

**2.6.10 Statement of reasons<sup>91</sup>**

An objection should to the extent possible indicate the reasons why it is being made.

**2.6.11 Non-requirement of confirmation of an objection made prior to formal confirmation of a reservation<sup>92</sup>**

An objection to a reservation made by a State or an international organization prior to confirmation of the reservation in accordance with guideline 2.2.1 does not itself require confirmation.

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<sup>88</sup> For the commentary see *ibid.*, pp. 195-197.

<sup>89</sup> For the commentary see *ibid.*, pp. 197-200.

<sup>90</sup> For the commentary see *ibid.*, pp. 200-203.

<sup>91</sup> For the commentary see *ibid.*, pp. 203-206.

<sup>92</sup> For the commentary see *ibid.*, pp. 206-208.

**2.6.12 Requirement of confirmation of an objection formulated prior to the expression of consent to be bound by a treaty<sup>93</sup>**

An objection formulated prior to the expression of consent to be bound by the treaty does not need to be formally confirmed by the objecting State or international organization at the time it expresses its consent to be bound if that State or that organization had signed the treaty when it had formulated the objection; it must be confirmed if the State or the international organization had not signed the treaty.

**2.6.13 Time period for formulating an objection<sup>94</sup>**

Unless the treaty otherwise provides, a State or an international organization may formulate an objection to a reservation by the end of a period of 12 months after it was notified of the reservation or by the date on which such State or international organization expresses its consent to be bound by the treaty, whichever is later.

**2.6.14 Conditional objections<sup>95</sup>**

An objection to a specific potential or future reservation does not produce the legal effects of an objection.

**2.6.15 Late objections<sup>96</sup>**

An objection to a reservation formulated after the end of the time period specified in guideline 2.6.13 does not produce the legal effects of an objection made within that time period.

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<sup>93</sup> For the commentary see *ibid.*, pp. 208-213.

<sup>94</sup> For the commentary see *ibid.*, pp. 213-217.

<sup>95</sup> For the commentary see *ibid.*, pp. 218-221.

<sup>96</sup> For the commentary see *ibid.*, pp. 221-225.

## **2.7 Withdrawal and modification of objections to reservations<sup>97</sup>**

### **2.7.1 Withdrawal of objections to reservations<sup>98</sup>**

Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

### **2.7.2 Form of withdrawal of objections to reservations<sup>99</sup>**

The withdrawal of an objection to a reservation must be formulated in writing.

### **2.7.3 Formulation and communication of the withdrawal of objections to reservations<sup>100</sup>**

Guidelines 2.5.4, 2.5.5 and 2.5.6 are applicable *mutatis mutandis* to the withdrawal of objections to reservations.

### **2.7.4 Effect on reservation of withdrawal of an objection<sup>101</sup>**

A State or an international organization that withdraws an objection formulated to a reservation is considered to have accepted that reservation.

### **2.7.5 Effective date of withdrawal of an objection<sup>102</sup>**

Unless the treaty otherwise provides, or it is otherwise agreed, the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State or international organization which formulated the reservation.

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<sup>97</sup> For the commentary see *ibid.*, pp. 225-228.

<sup>98</sup> For the commentary see *ibid.*, pp. 228-229.

<sup>99</sup> For the commentary see *ibid.*, p. 230.

<sup>100</sup> For the commentary see *ibid.*, pp. 230-231.

<sup>101</sup> For the commentary see *ibid.*, pp. 232-233.

<sup>102</sup> For the commentary see *ibid.*, pp. 233-236.

**2.7.6 Cases in which an objecting State or international organization may unilaterally set the effective date of withdrawal of an objection to a reservation<sup>103</sup>**

The withdrawal of an objection becomes operative on the date set by its author where that date is later than the date on which the reserving State or international organization received notification of it.

**2.7.7 Partial withdrawal of an objection<sup>104</sup>**

Unless the treaty provides otherwise, a State or an international organization may partially withdraw an objection to a reservation. The partial withdrawal of an objection is subject to the same formal and procedural rules as a complete withdrawal and becomes operative on the same conditions.

**2.7.8 Effect of a partial withdrawal of an objection<sup>105</sup>**

The partial withdrawal modifies the legal effects of the objection on the treaty relations between the author of the objection and the author of the reservation to the extent of the new formulation of the objection.

**2.7.9 Widening of the scope of an objection to a reservation<sup>106</sup>**

A State or international organization which has made an objection to a reservation may widen the scope of that objection during the time period referred to in guideline 2.6.13 provided that the widening does not have as an effect the modification of treaty relations between the author of the reservation and the author of the objection.

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<sup>103</sup> For the commentary see *ibid.*, pp. 236-237.

<sup>104</sup> For the commentary see *ibid.*, pp. 237-240.

<sup>105</sup> For the commentary see *ibid.*, pp. 240-241.

<sup>106</sup> For the commentary see *ibid.*, pp. 241-243.

## **2.8 Formulation of acceptances of reservations**

### **2.8.0 [2.8] Forms of acceptance of reservations<sup>107</sup>**

The acceptance of a reservation may arise from a unilateral statement in this respect or silence kept by a contracting State or contracting international organization within the periods specified in guideline 2.6.13.

#### **2.8.1 Tacit acceptance of reservations<sup>108</sup>**

Unless the treaty otherwise provides, a reservation is considered to have been accepted by a State or an international organization if it shall have raised no objection to the reservation within the time period provided for in guideline 2.6.13.

#### **2.8.2 Unanimous acceptance of reservations<sup>109</sup>**

In the event of a reservation requiring unanimous acceptance by some or all States or international organizations which are parties or entitled to become parties to the treaty, such an acceptance once obtained is final.

#### **2.8.3 Express acceptance of a reservation<sup>110</sup>**

A State or an international organization may, at any time, expressly accept a reservation formulated by another State or international organization.

#### **2.8.4 Written form of express acceptance<sup>111</sup>**

The express acceptance of a reservation must be formulated in writing.

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<sup>107</sup> For the commentary see *ibid.*, pp. 243-248.

<sup>108</sup> For the commentary see section C.2 below.

<sup>109</sup> For the commentary see section C.2 below.

<sup>110</sup> For the commentary see section C.2 below.

<sup>111</sup> For the commentary see section C.2 below.

**2.8.5 Procedure for formulating express acceptance<sup>112</sup>**

Guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6, and 2.1.7 apply *mutatis mutandis* to express acceptances.

**2.8.6 Non-requirement of confirmation of an acceptance made prior to formal confirmation of a reservation<sup>113</sup>**

An express acceptance of a reservation made by a State or an international organization prior to confirmation of the reservation in accordance with draft guideline 2.2.1 does not itself require confirmation.

**2.8.7 Acceptance of a reservation to the constituent instrument of an international organization<sup>114</sup>**

When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

**2.8.8 Organ competent to accept a reservation to a constituent instrument<sup>115</sup>**

Subject to the rules of the organization, competence to accept a reservation to a constituent instrument of an international organization belongs to the organ competent to decide on the admission of a member to the organization, or to the organ competent to amend the constituent instrument, or to the organ competent to interpret this instrument.

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<sup>112</sup> For the commentary see section C.2 below.

<sup>113</sup> For the commentary see section C.2 below.

<sup>114</sup> For the commentary see section C.2 below.

<sup>115</sup> For the commentary see section C.2 below.

**2.8.9 Modalities of the acceptance of a reservation to a constituent instrument<sup>116</sup>**

Subject to the rules of the organization, the acceptance by the competent organ of the organization shall not be tacit. However, the admission of the State or the international organization which is the author of the reservation is tantamount to the acceptance of that reservation.

For the purposes of the acceptance of a reservation to the constituent instrument of an international organization, the individual acceptance of the reservation by States or international organizations that are members of the organization is not required.

**2.8.10 Acceptance of a reservation to a constituent instrument that has not yet entered into force<sup>117</sup>**

In the case set forth in guideline 2.8.7 and where the constituent instrument has not yet entered into force, a reservation is considered to have been accepted if no signatory State or signatory international organization has raised an objection to that reservation by the end of a period of 12 months after they were notified of that reservation. Such a unanimous acceptance once obtained is final.

**2.8.11 Reaction by a member of an international organization to a reservation to its constituent instrument<sup>118</sup>**

Guideline 2.8.7 does not preclude States or international organizations that are members of an international organization from taking a position on the validity or appropriateness of a reservation to a constituent instrument of the organization. Such an opinion is in itself devoid of legal effects.

**2.8.12 Final nature of acceptance of a reservation<sup>119</sup>**

Acceptance of a reservation cannot be withdrawn or amended.

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<sup>116</sup> For the commentary see section C.2 below.

<sup>117</sup> For the commentary see section C.2 below.

<sup>118</sup> For the commentary see section C.2 below.



## **2.9 Formulation of reactions to interpretative declarations**

### **2.9.1 Approval of an interpretative declaration<sup>120</sup>**

“Approval” of an interpretative declaration means a unilateral statement made by a State or an international organization in reaction to an interpretative declaration in respect of a treaty formulated by another State or another international organization, whereby the former State or organization expresses agreement with the interpretation formulated in that declaration.

### **2.9.2 Opposition to an interpretative declaration<sup>121</sup>**

“Opposition” to an interpretative declaration means a unilateral statement made by a State or an international organization in reaction to an interpretative declaration in respect of a treaty formulated by another State or another international organization, whereby the former State or organization rejects the interpretation formulated in the interpretative declaration, including by formulating an alternative interpretation.

### **2.9.3 Recharacterization of an interpretative declaration<sup>122</sup>**

“Recharacterization” of an interpretative declaration means a unilateral statement made by a State or an international organization in reaction to an interpretative declaration in respect of a treaty formulated by another State or another international organization, whereby the former State or organization treats the declaration as a reservation.

A State or an international organization that intends to treat an interpretative declaration as a reservation should take into account draft guidelines 1.3 to 1.3.3.

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<sup>119</sup> For the commentary see section C.2 below.

<sup>120</sup> For the commentary see section C.2 below.

<sup>121</sup> For the commentary see section C.2 below.

<sup>122</sup> For the commentary see section C.2 below.

**2.9.4 Freedom to formulate approval, opposition or recharacterization<sup>123</sup>**

An approval, opposition or recharacterization in respect of an interpretative declaration may be formulated at any time by any contracting State or any contracting international organization and by any State or any international organization that is entitled to become a party to the treaty.

**2.9.5 Written form of approval, opposition and recharacterization<sup>124</sup>**

An approval, opposition or recharacterization in respect of an interpretative declaration should preferably be formulated in writing.

**2.9.6 Statement of reasons for approval, opposition and recharacterization<sup>125</sup>**

An approval, opposition or recharacterization in respect of an interpretative declaration should, to the extent possible, indicate the reasons why it is being made.

**2.9.7 Formulation and communication of approval, opposition or recharacterization<sup>126</sup>**

An approval, opposition or recharacterization in respect of an interpretative declaration should, *mutatis mutandis*, be formulated and communicated in accordance with draft guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7.

**2.9.8 Non-presumption of approval or opposition<sup>127</sup>**

An approval of, or an opposition to, an interpretative declaration shall not be presumed.

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<sup>123</sup> For the commentary see section C.2 below.

<sup>124</sup> For the commentary see section C.2 below.

<sup>125</sup> For the commentary see section C.2 below.

<sup>126</sup> For the commentary see section C.2 below.

<sup>127</sup> For the commentary see section C.2 below.

Notwithstanding draft guidelines 2.9.1 and 2.9.2, an approval of an interpretative declaration or an opposition thereto may be inferred, in exceptional cases, from the conduct of the States or international organizations concerned, taking into account all relevant circumstances.

### **2.9.9 Silence with respect to an interpretative declaration<sup>128</sup>**

An approval of an interpretative declaration shall not be inferred from the mere silence of a State or an international organization.

In exceptional cases, the silence of a State or an international organization may be relevant to determining whether, through its conduct and taking account of the circumstances, it has approved an interpretative declaration.

### **[2.9.10 Reactions to conditional interpretative declarations<sup>129</sup>**

Guidelines 2.6.1 to 2.8.12 shall apply, *mutatis mutandis*, to reactions of States and international organizations to conditional interpretative declarations.]

## **3. Validity of reservations and interpretative declarations**

### **3.1 Permissible reservations<sup>130</sup>**

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

(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

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<sup>128</sup> For the commentary see section C.2 below.

<sup>129</sup> For the commentary see section C.2 below.

<sup>130</sup> For the commentary see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)*, pp. 327-333.

(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 treaty<sup>131</sup>**

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; or

(c) Prohibiting certain categories of reservations and a reservation in question falls within one of such categories.

### **3.1.2 Definition of specified reservations<sup>132</sup>**

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.

### **3.1.3 Permissibility of reservations not prohibited by the treaty<sup>133</sup>**

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.

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<sup>131</sup> For the commentary see *ibid.*, pp. 333-340.

<sup>132</sup> For the commentary see *ibid.*, pp. 340-350.

<sup>133</sup> For the commentary see *ibid.*, pp. 350-354.

### 3.1.4 Permissibility of specified reservations<sup>134</sup>

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.

### 3.1.5 **Incompatibility of a reservation with the object and purpose of the treaty**<sup>135</sup>

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**<sup>136</sup>

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**<sup>137</sup>

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**<sup>138</sup>

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.

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<sup>134</sup> For the commentary see *ibid.*, pp. 354-356.

<sup>135</sup> For the commentary see *ibid.*, *Sixty-second Session, Supplement No. 10 (A/62/10)*, pp. 66-77.

<sup>136</sup> For the commentary see *ibid.*, pp. 77-82.

<sup>137</sup> For the commentary see *ibid.*, pp. 82-88.

<sup>138</sup> For the commentary see *ibid.*, pp. 89-98.

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*<sup>139</sup>**

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<sup>140</sup>**

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<sup>141</sup>**

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<sup>142</sup>**

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

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<sup>139</sup> For the commentary see *ibid.*, pp. 99-104.

<sup>140</sup> For the commentary see *ibid.*, pp. 104-109.

<sup>141</sup> For the commentary see *ibid.*, pp. 109-113.

<sup>142</sup> For the commentary see *ibid.*, pp. 113-116.

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<sup>143</sup>**

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.

**3.2 Assessment of the validity of reservations<sup>144</sup>**

The following may assess, within their respective competences, the validity of reservations to a treaty formulated by a State or an international organization:

- Contracting States or contracting organizations
- Dispute settlement bodies
- Treaty monitoring bodies

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<sup>143</sup> For the commentary see *ibid.*, pp. 117-121.

<sup>144</sup> For the commentary see section C.2 below.

**3.2.1 Competence of the treaty monitoring bodies to assess the validity of reservations<sup>145</sup>**

A treaty monitoring body may, for the purpose of discharging the functions entrusted to it, assess the validity of reservations formulated by a State or an international organization.

The conclusions formulated by such a body in the exercise of this competence shall have the same legal effect as that deriving from the performance of its monitoring role.

**3.2.2 Specification of the competence of treaty monitoring bodies to assess the validity of reservations<sup>146</sup>**

When providing bodies with the competence to monitor the application of treaties, States or international organizations should specify, where appropriate, the nature and the limits of the competence of such bodies to assess the validity of reservations. For the existing monitoring bodies, measures could be adopted to the same ends.

**3.2.3 Cooperation of States and international organizations with treaty monitoring bodies<sup>147</sup>**

States and international organizations that have formulated reservations to a treaty establishing a treaty monitoring body are required to cooperate with that body and should give full consideration to that body's assessment of the validity of the reservations that they have formulated.

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<sup>145</sup> For the commentary see section C.2 below.

<sup>146</sup> For the commentary see section C.2 below.

<sup>147</sup> For the commentary see section C.2 below.



**3.2.4 Bodies competent to assess the validity of reservations in the event of the establishment of a treaty monitoring body<sup>148</sup>**

When a treaty establishes a treaty monitoring body, the competence of that body is without prejudice to the competence of the contracting States or contracting international organizations to assess the validity of reservations to that treaty, or to that of dispute settlement bodies competent to interpret or apply the treaty.

**3.2.5 Competence of dispute settlement bodies to assess the validity of reservations<sup>149</sup>**

When a dispute settlement body is competent to adopt decisions binding upon the parties to a dispute, and the assessment of the validity of a reservation is necessary for the discharge of such competence by that body, such assessment is, as an element of the decision, legally binding upon the parties.

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<sup>148</sup> For the commentary see section C.2 below.

<sup>149</sup> For the commentary see section C.2 below.