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Reservations to treaties

Text and title of the draft guidelines provisionally adopted by the Drafting Committee on 20, 21 and 22 July 2010

3.3.3 Effect of individual acceptance of an impermissible reservation

Acceptance of an impermissible reservation by a contracting State or by a contracting organization shall not cure the nullity of the reservation.

3.3.4 Effect of collective acceptance of an impermissible reservation

A reservation that is prohibited by the treaty or which is incompatible with its object and purpose shall be deemed permissible if no contracting State or contracting organization objects to it after having been expressly informed thereof by the depositary at the request of a contracting State or a contracting organization.

4.5 Consequences of an invalid reservation

4.5.1 [4.5.1 Nullity of an invalid reservation and 4.5.2]

A reservation that does not meet the conditions of formal validity and permissibility set out in Parts 2 and 3 of the Guide to Practice is null and void, and therefore devoid of legal effect.

4.5.2 [4.5.3] Status of the author of an invalid reservation in relation to the treaty

When an invalid reservation has been formulated, the reserving State or the reserving international organization is considered a contracting State or a contracting organization or, as the case may be, a party to the treaty without the benefit of the reservation, unless a contrary intention of the said State or organization can be identified.

The intention of the author of the reservation shall be identified by taking into consideration all factors that may be relevant to that end, including:

- The wording of the reservation
- Statements made by the author of the reservation when negotiating, signing or ratifying the treaty, or otherwise expressing its consent to be bound by the treaty

- Subsequent conduct of the author of the reservation
- Reactions of other contracting States and contracting organizations
- The provision or provisions to which the reservation relates and
- The object and purpose of the treaty

4.5.3 [4.5.4] Reactions to an invalid reservation

The nullity of an invalid reservation does not depend on the objection or the acceptance by a contracting State or a contracting organization.

Nevertheless, a State or an international organization which considers that the reservation is invalid should, if it deems it appropriate, formulate a reasoned objection as soon as possible.

4.6 Absence of effect of a reservation on the relations between the other parties to the treaty

A reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

4.7 Effect of an interpretative declaration

4.7.1 [4.7 and 4.7.1] Clarification of the terms of the treaty by an interpretative declaration

An interpretative declaration does not modify treaty obligations. It may only specify or clarify the meaning or scope which its author attributes to a treaty or to certain provisions thereof and may, as appropriate, constitute an element to be taken into account in interpreting the treaty in accordance with the general rule of interpretation of treaties.

In interpreting the treaty, account shall also be taken, as appropriate, of the approval of, or opposition to, the interpretative declaration, by other contracting States or contracting organizations.

4.7.2 Effect of the modification or the withdrawal of an interpretative declaration in respect of its author

The modification or the withdrawal of an interpretative declaration may not produce the effects provided for in draft guideline 4.7.1 to the extent that other contracting States or contracting organizations have relied upon the initial declaration.

4.7.3 Effect of an interpretative declaration approved by all the contracting States and contracting organizations

An interpretative declaration that has been approved by all the contracting States and contracting organizations may constitute an agreement regarding the interpretation of the treaty.
