

Reservations to Treaties

Mr. Chairman,

1. Let me first of all congratulate the Commission and former Special Rapporteur Pellet with the Guide to Practice on Reservations to Treaties.

Monsieur le professeur, vous avez achevé un travail

The starting point should be the relevant provision of the Vienna Convention, and the flexibility of that system should be reflected. As we did in previous years and being fully aware that we are making an obvious point, we stress that the Guide is no more than just that. This should particularly be borne in mind in cases where the Guide contains, does, elements which are not based on practice. It is quite clear that the Guide may, or perhaps even will, form a starting point for the establishment of new state practice and perhaps eventually for international customary law.

3. As I stated the year before last, the systematic approach of special rapporteur Pellet has provided us with a wealth of insight and has crystallized a number of contemporary issues in the reservation area. In particular, I wish to express our appreciation for the clarity of the guidelines on the periodic review of reservations (2.5.3), the partial withdrawal of reservations (2.5.10) and the recharacterization of interpretative declarations (2.9.3). Another important step is the way in which the guidelines sketch how to determine and where to find the 'object and purpose of a treaty', this elusive concept in the law of treaties that is *ius entendu* but rather imprecise at times (3.1.5; 3.1.5.1).
4. Before addressing theoretical issues raised by this to practice before us, I wish to reiterate our continued disagreement with the content of

guideline 1.1.3, and agree with what has been said on this issue by the delegations of New Zealand and the United Kingdom.

5. One of the main problems addressed by the ILC was whether the invalidity of a reservation would mean that the author of the reservation would be bound to the treaty without the benefit of the reservation or would not be bound by the treaty at all. We welcome the approach chosen in guideline 4.5.3, but we would like to point out an apparent error in the third paragraph of this guideline, where the words 'at any time' may cause confusion as it might mean that the author of a reservation could change its position as a party after the expression of its consent to be bound.

6. Regrettably, a guideline suggesting the consideration of the desirability of formulating specific and precise provisions on reservations during the negotiations of a new instrument, is absent. We think this would be a logical addition within the spirit of these guidelines. Also, these guidelines would

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depository some days, or even weeks after the ~~expiry~~ of the consent to be bound are usually considered ~~valid~~, as the ~~late~~ ~~is~~ supposedly due to administrative oversight (which may be a very ~~liberal~~ interpretation of the facts). We strongly disagree with the view that ~~late~~ reservations be deemed accepted unless one state party objects to it. ~~There~~ is no practice supporting this, and this guideline would be a ~~developmental~~ ~~law~~, not necessarily progressive. For the Netherlands a reservation ~~made~~ in contravention

opposition to interpretative declarations would be the difference between reservations and interpretative declarations. In view it is far from common practice that States parties approve or oppose interpretative declarations. Presumptions regarding the silence of States with regard to interpretative declarations or to the conduct of St

level within European regional organizations - which are in fact the only ones known to us – are suitable for transposition to international (UN) level. The effectiveness of the two existing reservations dialogues is largely dependent upon the active participation of a limited group of States which share a unity of purpose and determination, operating in an informal setting and guided by confidentiality and mutual respect. We do not believe that a political forum such as the 6th Committee provides the required setting for the dialogue to function effectively and we therefore do not see the merit of formalising the reservations dialogue at that level. This, we are not able to support the recommendation in part II of the ILC's conclusion in the Annex to the Guide to Practice on Reservations (p.32-33/66/10/Add.1).

13. The second proposal of the Commission, based on the assumption that there

of view may translate in States not accepting a res