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RESERVATIONS TO TREATIES

Titles and texts of the draft guidelines adopted by the Drafting Committee on 23 and 24 May 2006

3.1 Permissible reservations

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
- (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

A reservation is expressly prohibited by the treaty if it contains a particular provision:

- Prohibiting all reservations;
- Prohibiting reservations to specified provisions and a reservation in question is formulated to one of such provisions;
- Prohibiting certain categories of reservations and a reservation in question falls within one of such categories.

3.1.2 Definition of specified reservations

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

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.

3.1.4 Permissibility of specified reservations

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.

1.6 Scope of definitions

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.

2.1.8 [2.1.7 bis] *Procedure in case of manifestly invalid reservations*

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.

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.
