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Seventeenth report on reservations to treaties

Addendum

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Contents

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III. Dispute settlement in the context of reservations

69. The 1969 and 1986 Vienna Conventions on the Law of Treaties contain no general dispute settlement clause[117] and part V, section 4, of those instruments does not establish the "procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty".[118] These provisions do not deal with disputes concerning the validity or the effects of reservations. They are therefore subject to the "common law" of dispute settlement and the parties must seek a solution primarily through one of the means set out in Article 33 of the Charter of the United Nations.

70. It nevertheless remains to be determined whether, in light of the frequency with which States (and, to a lesser extent, international organizations) are faced with reservations-related problems and the complexity of some of those problems, it would be appropriate to consider the manner in which differences of opinion that arise between the States (and international organizations) concerned should or could be resolved (see section III (A)). In light of the key principle of consent that governs such matters and the role that States wish to retain in that regard, such a mechanism should be as flexible and as easy to use as possible and should help them find a solution rather than offering an additional dispute settlement mechanism (see section III (B)). Final adoption of the Guide to Practice might provide an opportunity to make recommendations along those lines to States and international organizations, either directly or through the General Assembly.[119]

A. The issue

71. Although the Commission is not in the habit of providing the draft articles that it elaborates with clauses relating to the settlement of disputes and although, in the Special Rapporteur's opinion, this is usually undesirable[120] and might appear

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[117] R.J. Dupuy, "Codification et règlement des différends: les débats de Vienne sur les procédures de règlement", *Annuaire français de droit international*, vol. 15, 1969, pp. 70-91; Shabtai Rosenne, "The Settlement of Treaty Disputes under the Vienna Convention", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 31, 1971, pp. 1-62; Moritaka Hayashi, "The Dispute Settlement Clause of the 1986 Vienna Convention on the Law of Treaties", *New York University Journal of International Law and Politics*, vol. 19, 1987, pp. 327-356; and Hélène Ruiz Fabri on "Article 66" in Olivier Corten and Pierre Klein, eds., *Les Conventions de Vienne sur le droit des traités, Commentaire article par article* (Brussels, Bruylant, 2006), pp. 2,391-2,442; see also the 3 February 2006 judgment of the International Court of Justice on jurisdiction and admissibility, *Armed activities on the territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), I.C. J. Reports* 2006, paras. 120-125.

[118] This is the title of article 65. Article 66, which is worded differently in the two Conventions in order to take into account the fact that international organizations cannot submit applications to the International Court of Justice, concerns the compulsory procedures for judicial settlement, arbitration (for disputes concerning the application or interpretation of articles 53 or 64 on *jus cogens*) and conciliation (for disputes concerning other causes of nullity, termination, suspension of the application of a treaty or withdrawal of a part thereof). See also the annex to the Convention concerning conciliation procedures.

[119] On this point, see below, para. 100.

[120] In paragraph 47 of his second report on reservations to treaties (*Yearbook ... 1996*, vol. II, Part One), the Special Rapporteur said that in his view, "the discussion of a regime for the settlement of disputes [in the draft articles prepared by the Commission] diverts attention from the topic under consideration strictly speaking, gives rise to useless debates and is detrimental to efforts

incompatible with the non-compulsory nature of the Guide to Practice (see section III (A) (1)), specific reasons seem to justify an exception in the present case; however, this should be only a flexible, optional mechanism (see section III (A) (2)).

1. Disadvantages of a rigid, compulsory dispute settlement mechanism

72. The recent note by the Secretariat on the settlement of dispute clauses[121] shows that the Commission's practice regarding the inclusion in its draft articles of proposals regarding the settlement of potential disputes arising from their application has varied.[122] In the Special Rapporteur's view, the question is, for the most part, improperly framed, asking not whether the inclusion of such clauses in a potential future convention would be likely to increase its effectiveness, but whether it is the Commission's role to consider, for each set of draft articles, the final clauses that might accompany it;[123] it is clear that such provisions are not, *stricto sensu*, codification and while the practice in the peaceful settlement of disputes doubtless contributes to the progressive development of international law, it is difficult to see how their inclusion in the Commission's drafts facilitates this. Furthermore, as a general rule, the General Assembly has not adopted or followed the Commission's proposals when the latter, usually after long and repeated discussions, has included settlement clauses in drafts adopted on first or second reading.[124]

73. Also worthy of mention are the specific objections to the inclusion of dispute settlement provisions in a document such as the Guide to Practice since it was decided at the outset that it would not be compulsory in nature.[125] It might initially seem strange to accompany such an instrument with dispute settlement clauses; since it is not binding on States and international organizations, it might be assumed that it could not provide a basis for a compulsory solution where a dispute on its implementation arises.

74. It is true that there is nothing to prevent States or international organizations, if they so desire, from undertaking unilaterally to apply the provisions of the Guide to Practice, either generally or for purposes of settlement of a specific dispute concerning reservations. The technique of referring to "soft" instruments included in binding instruments has become more common in the context of procedural norms (for example, the United Nations Commission on International Trade Law

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to complete the work of the Commission within a reasonable period. It seems to him that, if States deem it necessary, the Commission would be better advised to draw up draft articles which are general in scope and could be incorporated, in the form of an optional protocol, for example, in the body of codification conventions".

[121] A/CN.4/623 (15 March 2010).

[122] The note by the Secretariat mentions nine drafts in which the Commission included one or more dispute settlement clauses and eight drafts for which such inclusion was discussed, but ultimately rejected; to these should be added a number of other drafts, not mentioned in the note, for which the question does not appear to have arisen (such as the draft articles on consular relations and the draft articles on special missions).

[123] Dispute settlement provisions are usually included in the final clauses.

[124] See, in general, the note by the Secretariat (note 121 above), paras. 16-44.

[125] See the report of the International Law Commission on the work of its forty-seventh session, *Yearbook ... 1995*, vol. II, Part Two, p. 113, paras. 484 and 487; see also below, part IV of this report.

(UNCITRAL) Arbitration Rules[126] or the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States[127]) or substantive rules, (see, for example, the Financial Action Task Force (FATF) recommendations on money-laundering[128] and the financing of terrorism[129]). This technique met a need and, in any event, is available to interested States and international organizations, which are free to employ it, as needed, by mutual consent. There is no particular reason to provide for it expressly in the Guide to Practice or in an annex thereto.

75. Moreover, generally speaking, any "compulsory" mechanism — in the two meanings of the word: either the parties to the dispute are required to use it, or a solution that is legally binding on the parties can be adopted — appears, a priori, to be inconsistent with the reservations regime as adopted in Vienna and, in any event, as interpreted by the majority of States. While the essential function of reservations is to find a balance between the universality requirements of open treaties and the integrity of their content, it is clear that States wish to retain broad discretionary power to assess the permissibility of reservations and even, while this appears more debatable, to determine the effects of a reservation, regardless of whether it is permissible.[130] The Sixth Committee's discussion of draft guideline 4.5.2 [4.5.3]

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[126] Bilateral investment treaties often refer to these Rules. For example, the case of *HICEE B.V. v. The Slovak Republic*, conducted under the aegis of the Permanent Court of Arbitration, was brought in application of the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic, which refers to the UNCITRAL Arbitration Rules. See, among many examples, the case of *European American Investment Bank AG v. The Slovak Republic*, conducted under the UNCITRAL Rules pursuant to the Agreement between the Republic of Austria and the Czech and Slovak Federal Republic Concerning the Promotion and Protection of Investments. See also article 18 of the Agreement of 6 March 2007 between the Government of the Republic of France and the Government of the United Arab Emirates relating to the Abu Dhabi Universal Museum.

[127] The arbitration compromise between Belgium and the Netherlands in the case concerning the *Iron Rhine Railway* (available at http://www.pca-cpa.org/upload/files/BE-NL%20Arbitration%20Agreement.pdf) was based largely on the Optional Rules, as are the rules of procedure of the Eritrea-Ethiopia Boundary Commission and the Eritrea-Ethiopia Claims Commission (see articles 4.11 and 5.7 of the Agreement between the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea of 12 December 2000). See also article 16 of the August 2003 Treaty between the Government of the Republic of Namibia and the Government of the Republic of South Africa on the establishment of the [|Ai-|Ais/Richtersveld] Transfrontier Park.

[128] See, for example, principle 13 of the Pre-Accession Pact on Organized Crime between the Member States of the European Union and the Applicant Countries of Central and Eastern Europe and Cyprus (OJEC C 220, 15 July 1998, p. 5) and Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (*Official Journal of the European Union* L 319, 5 December 2007, pp. 1-36).

[129] See Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (*Official Journal of the European Union* L 309, 25 November 2005, pp. 15-36).

[130] For consideration of objections with intermediate effect, see paragraph (23) of the commentary to draft guideline 2.6.1 (Definition of objections to reservations) in the report of the International Law Commission on the work of its fifty-seventh session, 2005 (*Official Documents of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), p. 199); draft guideline 3.4.2 (Permissibility of an objection to a reservation) and the commentary thereto in the report of the International Law Commission on the work of its sixty-second session, 2010 (*Official Documents of the General Assembly, Sixty-fifth Session, Supplement No. 10* (A/65/10), pp. 87-93); and draft guideline 4.3.6 [4.3.7] (Effect of an objection on provisions other than

(Status of the author of an invalid reservation in relation to the treaty)[131] at the sixty-fifth session of the General Assembly is a particularly telling example of many States' reluctance to agree that an invalid reservation could produce objective effects in the name of a rigid — and debatable[132] — concept of consensus.[133]

76. It must, moreover, be recognized that, like treaty law as a whole, reservations law is heavily influenced by the principle of consensus.[134] And clearly, in the absence of treaty monitoring bodies[135] or dispute settlement bodies with

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those to which the reservation relates) and the commentary thereto (ibid., pp. 166-168); and, above all, objections with "maximum" effect (see para. (22) of the commentary to draft guideline 2.6.1 (Definition of objections to reservations) in the report of the International Law Commission on the work of its fifty-seventh session, 2005 (*Official Documents of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), p. 200); and draft guideline 4.3.4 [4.3.5] (Non-entry into force of the treaty as between the author of a reservation and the author of an objection with maximum effect) and the commentary thereto in the report of the International Law Commission on the work of its sixty-second session, 2010 (*Official Documents of the General Assembly, Sixty-fifth Session, Supplement No. 10* (A/65/10), pp. 151-154). On objections with "super-maximum" effect, see para. (24) of the commentary to draft guideline 2.6.1 (Definition of objections to reservations) in the report of the International Law Commission on the work of its fifty-seventh session, 2005 (*Official Documents of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), p. 201); draft guideline 4.3.7 [4.3.8] (Right of the author of a valid reservation not to be compelled to comply with the treaty without the benefit of its reservation) and the commentary thereto in the report of the International Law Commission on the work of its sixty-second session, 2010 (*Official Documents of the General Assembly, Sixty-fifth Session, Supplement No. 10* (A/65/10), pp. 169-170); para. (23) of the commentary to draft guideline 4.5.1 (Nullity of an invalid reservation) (ibid., pp. 189-90); and paras. (3)-(5) and (49) of the commentary to draft guideline 4.5.2 [4.5.3] (Status of the author of an invalid reservation in relation to the treaty) (ibid., pp. 193-194 and 208).

131 The numbers (and, in some cases, the titles) in brackets refer to the numbers and titles of the draft guidelines adopted by the Working Group on Reservations to Treaties during the first part of the sixty-third session of the Commission. For the commentary to draft guideline 4.5.2 [4.5.3], see the report of the International Law Commission on the work of its sixty-second session, 2010 (Official Documents of the General Assembly, Sixty-fifth Session, Supplement No. 10 (A/65/10), pp. 192-208).

132 See the first addendum to the fifteenth report on reservations to treaties (A/CN.4/624/Add.1), paras. 435-482.

133 Summary records of the 19th, 20th and 21st meetings of the Sixth Committee of the General Assembly (A/C.6/65/SR.19, A/C.6/65/SR.20 and A/C.6/65/SR.21 of 25, 26 and 27 October 2010, respectively). It is true that conversely, a similar number of delegations expressed support for a more objective approach.

134 See paragraph (8) of the commentary to draft guideline 2.6.3 [2.6.2] (Freedom to formulate objections) in the report of the International Law Commission on the work of its sixty-second session, 2010 (*Official Documents of the General Assembly, Sixty-fifth Session, Supplement No. 10* (A/65/10), p. 76); paragraph (2) of the commentary to draft guideline 4.3 (Effect of an objection to a valid reservation) (ibid., p. 147); and paragraph (3) of the commentary to draft guideline 5.1.7 [5.1.6] (Territorial scope of reservations in cases involving a uniting of States) (ibid., p. 252).

135 ... within the limits of their competence; see draft guideline 3.2.1 (Competence of the treaty monitoring bodies to assess the permissibility of reservations) and the commentary thereto in the report of the International Law Commission on the work of its sixty-first session, 2009 (*Official Documents of the General Assembly, Sixty-fourth Session, Supplement No. 10* (A/64/10), pp. 301-302.

competence to assess the permissibility of reservations,[136] according to a general principle of international law,[137] each State (or international organization — including the authors of reservations and objections to reservations — is responsible for assessing, from its own perspective, the permissibility (and, to some extent, the effects) of a reservation. Many States remain committed to this interactive system (which, while it may be regrettable, is not, in the Special Rapporteur's view, incompatible with the "Vienna regime" for reservations).

77. It therefore seems fruitless to develop a sophisticated, compulsory dispute settlement regime for reservations.[138] Of course, such a regime might please a few "virtuous" States that have long preferred this form of settlement, but there is every reason to believe that it would target many other States that might view it as a veiled attempt to give the Guide to Practice a legally binding value that it is not intended to have.

2. Advantages of a flexible assistance mechanism for the resolution of disputes concerning reservations

78. It is true that there are various mechanisms for the peaceful settlement of international disputes and that they do not necessarily result in legally binding solutions. Those set out in Article 33 of the Charter of the United Nations — negotiation, enquiry, mediation and conciliation — are not contrary to the will of the parties, even though the latter undertake in advance to have recourse to them, since the resulting solutions are not legally binding.

79. International conventions[139] and General Assembly and Security Council[140] resolutions frequently recommend that States have recourse to one or another of

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[136] See draft guideline 3.2.5 (Competence of dispute settlement bodies to assess the permissibility of reservations) and the commentary thereto in the report of the International Law Commission on the work of its sixty-first session, 2009 (*Official Documents of the General Assembly, Sixty-fourth Session, Supplement No. 10* (A/64/10), p. 306.

[137] See the advisory opinion of the International Court of Justice of 28 May 1951, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, I.C.J. Reports 1951*, p. 24: "[E]ach State which is a party to the Convention is entitled to appraise the validity of the reservation, and it exercises this right individually and from its own standpoint". See also the preliminary conclusions of the International Law Commission on reservations to normative multilateral treaties including human rights treaties: "The Commission stresses that this competence of the monitoring bodies does not exclude or otherwise affect the traditional modalities of control by the contracting parties, on the one hand, in accordance with the...provisions of the Vienna Conventions of 1969 and 1986 [on reservations] and, where appropriate, by the organs for settling any dispute that may arise concerning the interpretation or application of the treaties" (*Yearbook ... 1997*, vol. II, Part Two, para. 157).

[138] In paragraph 50 of his second report on reservations to treaties (see note 120 above), the Special Rapporteur, after expressing his reluctance, on principle, to include dispute settlement clauses in the Commission's drafts (see note 120 above), nevertheless stated that the problem arose in a particular manner with regard to the topic of reservations: "Under these conditions, it may be useful to consider the establishment of mechanisms for the settlement of disputes in this specific area since, in the view of the Special Rapporteur, these mechanisms could be provided for, either in standard clauses that States could insert in future treaties to be concluded by them, or in an additional optional protocol that could be added to the 1969 Vienna Convention". He now believes that such a solution would be inappropriate as it would be too cumbersome and formal.

[139] See, inter alia, article 65, paragraph 3, of the 1969 Vienna Conventions, which refer to Article 33 of the Charter. The charters of some international organizations envisage non-compulsory dispute settlement mechanisms: for example, article 10 of the Charter of the Association of

these forms of settlement. On the basis of these precedents, the Commission may wish to recommend that States and international organizations[141] should settle disputes concerning reservations by one of these means (and, moreover, through the "compulsory" settlement mechanisms: arbitration and judicial settlement).

80. However timely such a recommendation might appear, it must be acknowledged that it does not meet any need specific to disputes concerning reservations that arise between States. While such disputes almost always have underlying political or even ideological motives, they nevertheless have certain overall characteristics:

- They are highly technical, as seen by the technical nature of the entire Guide to Practice;
- They imply a balance — always difficult to assess — between the contradictory requirements of opening the treaty to the broadest possible participation and preserving its integrity; and
- For this reason, they often call for nuanced solutions that do not imply a total rejection of the position of either party (or of any of the parties), but a balance

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Southeast Asian Nations (2007), article 26 of the Constitutive Act of the African Union (2000), and article 37 of the Charter of the Organisation of the Islamic Conference (1972). For recent examples of conventions with more limited subject matter, see article 10 of the Convention on Cluster Munitions (2008); article 66 of the United Nations Convention against Corruption (2000) and article 16 of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), which allow States to choose among several proposed forms of settlement.

[140] See, inter alia, the General Assembly's recommendations on the criminal accountability of United Nations officials and experts on mission (resolutions 63/119 of 11 December 2008 and 64/110 of 16 December 2009); on sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (resolution 63/112 of 5 December 2008); on follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons* (resolution 60/76 of 8 December 2005); and in the 2005 World Summit Outcome document (resolution 60/1 of 16 September 2005). The Security Council has had occasion to recall these obligations in general terms in its resolution on the maintenance of international peace and security: nuclear non-proliferation and nuclear disarmament of 24 September 2009 (S/RES/1887 (2009) and in considering specific situations (resolutions 1862 (2009) and 1907 (2009) of 14 January and 23 December 2009, respectively, on peace and security in Africa). See also the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session (*Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17), Annex II). Within the framework of the Council of Europe, a series of recommendations have been made on the subject of the uniform interpretation of Council of Europe conventions. Initially, they referred only to non-binding mechanisms (see Parliamentary Assembly recommendation 454 (1966) of 27 January 1966, cited by Hans Wiebringhaus, "L'interprétation uniforme des Conventions du Conseil de l'Europe", in *Annuaire français de droit international*, vol. 12, 1966, p. 456); more recently, the establishment of a judicial mechanism has been proposed (see Parliamentary Assembly recommendation 1458 (2000) of 6 April 2000 (Towards a uniform interpretation of Council of Europe conventions: creation of a general judicial authority).

[141] ... unless the Commission prefers to make its recommendations to the General Assembly so that the latter can "relay" them to States and international organizations; see below, para. 100.

or, in any event, a middle ground that, specifically, involves making adjustments to challenged reservations rather than simply abandoning or maintaining them.[142]

81. The reservations dialogue[143] is a response that is adapted to these nuanced requirements. It is, in a sense, a specific manifestation of negotiations on reservations. However, it is far from capable of producing a satisfactory solution in every case.[144] Just as a stalemate in direct negotiations between the parties to a dispute, whatever its nature, calls for recourse to an impartial third party, so an impasse in the reservations dialogue should lead States and international organizations that disagree as to the interpretation, the permissibility or the effects of a reservation or an objection (or acceptance) to seek the assistance of a third party.

82. In light of the highly technical nature of most such problems,

- The third party in question should have the necessary technical competence to resolve them (or to contribute to their resolution);
- Its intervention would be particularly useful for small States with administrations that are ill-equipped to consider the often-complex questions raised by the formulation of reservations or reactions thereto and cannot devote the necessary time to the matter;
- This means that in addition to its role of assisting with the resolution of disputes arising in connection with reservations, it might be useful for a third-party mechanism to have a joint function: the provision of assistance with the settlement of disputes concerning reservations, and of technical assistance to States that felt the need to refer to it questions relating to the drafting of reservations that they planned to formulate or to the position that they should take with respect to the reservations made by other States or international organizations;
- These functions do not necessarily preclude other, more classic, dispute resolution functions *stricto sensu*, such as compulsory judicial settlement, on-demand settlement and settlement with the express consent of all concerned parties.

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[142] See the commentary to draft guideline 2.1.9 [2.1.2] (Statement of reasons) (*Official Documents of the General Assembly, Sixty-third Session, Supplement No. 10* (A/63/10), pp. 184-189) and the commentary to draft guideline 2.6.10 [2.6.9] (Statement of reasons) (ibid., pp. 203-206); see also the examples given in paragraphs (14) to (19) of the commentary to draft guideline 2.6.1 (Definition of objections to reservations) (*Official Documents of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10); in the commentary to draft guideline 2.6.15 [2.6.13] (Late objections) (*Official Documents of the General Assembly, Sixty-third Session, Supplement No. 10* (A/63/10), pp. 221-225); and in paragraph (36) of the commentary to draft guideline 4.5.2 [4.5.3] (reservation) (Status of the author of an invalid reservation in relation to the treaty) (*Official Documents of the General Assembly, Sixty-fifth Session, Supplement No. 10* (A/65/10), pp. 204-205). See also section I of this report, paras. 4-17.

[143] See section I of this report.

[144] See section I of this report, paras. 18-21.

B. The proposed mechanism

83. In light of the foregoing considerations, it appears possible to outline the elements of a reservations and objections to reservations assistance mechanism (section III (B) (2)) by referring to existing precedents and, specifically, to the one established by the Council of Europe Ad hoc Committee of Legal Advisers on Public International Law (CAHDI) (section III (B) (1)).

1. The precedent set by the Council of Europe

84. Many bodies, as part of their mandate to monitor the treaty (usually a human rights treaty) under which they were established, are called upon to rule on the question of the permissibility of reservations formulated by States parties and on the consequences of the potential impermissibility thereof when considering either the periodic reports submitted by States parties or complaints submitted by individuals.[145] As a general rule, these bodies' views are not binding on the States in question.[146] This is not the case with the binding decisions of international courts,[147] particularly the European Courts[148] and the Inter-American Court of Human Rights.[149] But these judgments (a) do not, generally speaking, resolve disputes between States and (b) are not binding on the State in question; therefore, they do not fall within the scope of this section.

85. Only the provisions for the systematic consideration of certain reservations that exist within the framework of the Council of Europe (under the auspices of CADHI) and the European Union (the Working Party on International Public Law

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[145] See draft guideline 3.2 (Assessment of the permissibility of a reservation) and the commentary thereto (*Official Documents of the General Assembly, Sixty-fourth Session, Supplement No. 10* (A/64/10), pp. 284-296).

[146] See draft guideline 3.2.1 (Competence of the treaty monitoring bodies to assess the permissibility of reservations): "A treaty monitoring body may, for the purpose of discharging the functions entrusted to it, assess the permissibility 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". See also the commentary to this draft guideline (*Official Documents of the General Assembly, Sixty-fourth Session, Supplement No. 10* (A/64/10), pp. 296-297).

[147] International courts may also issue advisory opinions on legal problems relating to reservations, as seen from several famous cases: advisory opinion of the International Court of Justice of 28 March 1951, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, I.C.J. Reports* 1951, p. 24; Inter-American Court of Human Rights, advisory opinion OC-2/82 of 24 September 1982, *The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights (arts. 74 and 75)* and advisory opinion OC-3-83 of 8 September 1983, *Restrictions to the death penalty (arts. 4(2) and 4(4) of the American Convention on Human Rights)*.

[148] *Belilos v. Switzerland*, Judgement of 29 April 1988, *Reports of judgments and decisions of the European Court of Human Rights*, Series A, No. 132; Judgment of 22 May 1990, *Weber v. Switzerland*, ibid., No. 177; and *Loizidou v. Turkey*, Preliminary Objections, Judgment of 23 March 1995, ibid., No. 310.

[149] Inter-American Court of Human Rights, *Hilaire v. Trinidad and Tobago*, Preliminary Objections, Judgment of 1 September 2001, Series C, No. 80, para. 98. See also *Benjamin et al. v. Trinidad and Tobago*, Preliminary Objections, Judgment of 1 September 2001, Series C, No. 81, and *Radilla Pacheco v. United Mexican States*, Judgment of 23 November 2009, Series C, No. 209.

(COJUR)) constitute useful precedents for the establishment of a flexible, specialized mechanism.[150]

86. Austrian Ambassador Franz Cede, who played a key role in the establishment of these mechanisms, gave the following explanation:

> Pending the final conclusions to be drawn from the work of the ILC it is noteworthy how greatly the consideration and study of the law and practice on reservations by the ILC has already influenced the world-wide discussion of this matter. Against the backdrop of increased sensitivity about reservations to human rights treaties and the heightened interest in the legal complexities of reservations, the international community now devotes considerable attention to the problem and to the issue of how to respond to questionable reservations, in particular to those which give rise to doubts as to their compatibility with the object and purpose of the relevant treaty.[151]

87. Little is known of the work of COJUR in this area, which consists primarily of periodic exchanges of information and in-depth exchanges of views among members of the European Union in order to coordinate their reactions to reservations that are deemed to be impermissible. This coordination may result in model objections that participating States are encouraged to make on their own behalf.[152]

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[150] On the basis of drafts prepared by the Inter-American Juridical Committee, the General Assembly of the Organization of American States (OAS) adopted resolution AG/RES. 888 (XVII-O/87) of 14 November 1987 on standards on reservations to the Inter-American multilateral treaties and rules for the General Secretariat as depositary of treaties, available online at http://www.oas.org/DIL/resolutionsgeneralassembly_AG-RES888.htm; see also the report of the Committee on Juridical and Political Affairs on Standards on Reservations to Inter-American Multilateral Treaties and Rules for the General Secretariat as Depositary of Treaties, OAS Permanent Council, 19 August 1987 (OAS Ser. G, CP/Doc. 1830/87). This resolution has two parts; one reproduces, mutatis mutandis, the Vienna Conventions' rules on reservations while the other sets out rules (based on those contained in article 78 of the 1986 Convention, which corresponds to article 77 of the 1969 Convention) to be followed by the secretariat in fulfilling its functions as a depositary; it does not establish a mechanism for considering issues raised by reservations. Article II, which is a slightly adapted version of article 78, paragraph 2, of the 1986 Convention, reads: "In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of *the Organization or of the Inter-American Specialized Organization* concerned" (the italics indicate the wording that differs from that of article 78).

[151] Franz Cede, "European Responses to Questionable Reservations" in Wolfgang Benedek, Hubert Isak and Renate Kicker, eds., *Development and Developing International and European Law: Essays in Honour of Konrad Ginther on the Occasion of His 65th Birthday* (Frankfurt am Main and New York, Peter Lang Verlag, 1999), p. 25.

[152] These exchanges of views do not lead to published documents that can be consulted; it is a little-known mechanism. See, however, the "insider" description provided by Franz Cede (note 151 above), pp. 28-30; and Jean Paul Jacqué in his presentation to the Group of Specialists on Reservations to International Treaties on the subject of COJUR (D-S-RIT (98) 1, Strasbourg, 2 February 1998), "Consideration of reservations to international treaties in the context of the EU: the COJUR", paras. 137-147; see also Sia Spiliopoulo Åkermark, "Reservations Issues in the Mixed Agreements of the European Community", *Finnish Yearbook of International Law*, vol. 10, 1999, p. 387; et Johan G. Lammers, "The Role of the Legal Adviser of the Ministry of Foreign Affairs: The Dutch Approach and Experience", *Tulane Journal of International and Comparative Law*, vol. 18, 2009, pp. 193-194.

88. The functions and activities of CAHDI in its capacity as the European Observatory of Reservations to International Treaties, which publishes most of its records, are better known.

89. This special mandate of CAHDI was preceded, at the initiative of Austria, by the December 1997 establishment of the Group of Specialists on Reservations to International Treaties,[153] which was called upon to:

(a) Examine and propose ways and means and, possibly, guidelines to assist member States in developing their practice regarding their response to reservations and interpretative declarations actually or potentially inadmissible under international law; and

(b) Consider the possible role of the CAHDI as an "observatory" of reservations to multilateral treaties of significant importance to the international community raising issues as to their admissibility under international law, and as an observatory of reactions by Council of Europe member States Parties to these instruments.

90. In accordance with the recommendations of the Group of Experts,[154] CADHI has acted as the European Observatory of Reservations to International Treaties since 1998 and plays an important role in the international community, and in the reactions of States parties that are members of the Council of Europe.[155]

91. Since then, the agenda of every meeting of CAHDI has included an item entitled "Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties" and a "List of outstanding reservations and declarations to international treaties" and a "Table of objections" are prepared by the secretariat for consideration.[156] During those meetings, the participants (Council of Europe member States and a number of observer States and international organizations) exchange views concerning the permissibility of problematic reservations and, where appropriate, coordinate their reactions and even their actions. It should be noted that CAHDI functions as an observatory both of reservations and objections to treaties concluded under Council of Europe auspices and of global treaties.

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[153] The Group's mandate, established at the 14th meeting of CAHDI (resolution (97) 4, September 1997) was approved by the Committee of Ministers of the Council of Europe on 16 December 1997. The title "Group of Specialists" (DI-S-RIT) was replaced by "Group of Experts" (DI-E-RITST) in 1998.

[154] It was also pursuant to a proposal of the Group of Experts that the Council of Ministers adopted recommendation R (99) 13 of 18 May 1999 on responses to inadmissible reservations to international treaties.

[155] The work of CADHI in its capacity as the European Observatory of Reservations to International Treaties has been discussed, inter alia, in the following reports of the Special Rapporteur on reservations to treaties: third report, 1998 (A/CN.4/491), paras. 28-29; fourth report, 1999 (A/CN.4/499), paras. 42-43; eighth report, 2003 (A/CN.4/535), para, 23; eleventh report, 2006 (A/CN.4/574), para. 56; and fourteenth report, 2009 (A/CN.4/614), para. 64. See also the description of the Observatory by the Observer for CAHDI in paragraph 3 of his statement to the International Law Commission on 16 July 1999 at its 2,604th meeting (*Yearbook ... 1999*, vol. I, pp. 268-269).

[156] For the most recent session of CAHDI (41st meeting, Strasbourg, 17-18 March 2011), see CAHDI (2011) 3 and CAHDI (2011) 3 Add prov.

92. In its 2010 report, CAHDI stated:

> [A]s regards the issue of reducing the use of reservations, derogations and restrictive declarations, the CAHDI has conducted two specific recent activities in its capacity as European Observatory of reservations to international treaties. Since 1998, the CAHDI regularly considers a list of outstanding reservations to international treaties, concluded within and outside the Council of Europe. Members of the CAHDI are therefore regularly called upon to consider outstanding reservations and declarations and to exchange views on national positions. A table of objections to these clauses is regularly presented to the Committee of Ministers together with abridged reports of the CAHDI meetings. This activity constitutes one of the core activities of the CAHDI.[157]

93. It is certain that this mechanism, which appears fruitful, offers an interesting precedent. For the following reasons, however, it could not simply be universalized:

- The Council of Europe is a regional organization with 47 member States, whereas the United Nations has 192 Member States; coordination on technical issues of this type is doubtless more difficult in a global context;
- Alliances among Council of Europe member States, their many cultural similarities and their representatives' habit of meeting and working together constitute a coordination framework that is, a priori, more effective than what could be anticipated at the global level;
- Generally speaking, the Council's members are rich countries with legal bodies that have the necessary technical competence, whereas one of the primary arguments for establishing a reservations assistance mechanism is to compensate for the lack of resources and competence that handicaps many United Nations Member States;
- Lastly, and perhaps most importantly, whereas the objective of the (European) Observatory of Reservations to International Treaties is to present as united as possible a "front" with respect to reservations formulated by other States, this would obviously not be the function of the assistance mechanism envisaged here; it will be clear from the preceding section that its purpose would be rather to provide technical assistance to States that wished to receive it; to help States (and international organizations) with differing views concerning reservations to resolve their differences by finding common ground; and to provide those countries or international organizations with specific information on the applicable legal rules.

94. The Council of Europe's experience can nevertheless offer a rich source of inspiration, particularly on the following points:

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[157] CAHDI, abridged report on the 40th meeting, held in Tromsø on 16 and 17 September 2010 (CM(2010)139, 21 October 2010), Annex 4, para. 5, available at https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM(2010)139&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864.

- From an external perspective,[158] it appears that CAHDI, in its capacity as the European Observatory of Reservations to International Treaties, combines technical rigor with political realism;
- This satisfactory situation is doubtless a consequence of the fact that the members of CAHDI are both highly qualified technicians, and practitioners with an understanding of the political and administrative constraints that States may face in implementing the treaties by which they are bound;[159] and
- This precedent suggests that a cooperation mechanism that does not culminate in a binding or even formal decision may produce satisfactory and effective results.

2. The reservations and objections to reservations assistance mechanism

95. In light of the foregoing considerations, the Commission might recommend the establishment of a reservations and objections to reservations assistance mechanism with the following characteristics:

96. First, it should be a flexible mechanism; referral to it and recommendations made by it should not, in principle, be compulsory (on the understanding, however, that States and international organizations with a dispute concerning the interpretation, permissibility or effects of a reservation to a treaty should be free to resort to it and, if appropriate, agree to consider the guidelines contained in the Guide to Practice as compulsory in resolving their dispute).

97. Second, such a mechanism should have a dual function: it should both assist in the resolution of differences of opinion on reservations and provide technical advice on matters relating to reservations and reactions thereto.

98. Third, such assistance should be provided by government experts selected on the basis of their technical competence and their practical experience in public international law and, specifically, treaty law. The mechanism should be a small body (no more than 10 members who serve only at need) with a very small secretariat.

99. Fourth, there should be no question of requiring the mechanism simply to impose either the Vienna Convention rules on States that are not parties to the Convention, or the non-compulsory guidelines in the Guide to Practice. It should, however, be understood that it will give due consideration to these provisions and guidelines.

100. It might, however, be asked whether the Commission should make such a recommendation to States and international organizations directly, or to the General Assembly. Whereas the Special Rapporteur opted for the first solution in the case of the reservations dialogue,[160] it appears to him that in the case of this

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[158] See Cede (note 151 above), pp. 30-34.

[159] According to Cede, “Whereas judicial decisions or ‘views’ taken by supervisory treaty bodies generally do not attach great significance to the political circumstances of a concrete treaty obligation, the examination of the problems which a particular reservation may raise is regularly placed in a comprehensive context by Legal Advisers who are representing their respective governments” (note 151 above, p. 34).

[160] A/CN.4/647, para. 68.

recommendation, there is no need to choose between the two; neutral wording could be used and it could be left to the General Assembly to decide how to proceed.

101. Thus, the draft recommendation that the Commission is invited to adopt might read as follows:

Draft recommendation of the International Law Commission on technical assistance and assistance in the settlement of disputes concerning reservations

The International Law Commission,

Having completed preparation of the Guide to Practice on Reservations to Treaties,

Aware of the difficulties faced by States and international organizations in the interpretation, assessment of the permissibility, and implementation of reservations and objections thereto,

Attaching great importance to the principle that States should resolve their international disputes by peaceful means,

Convinced that adoption of the Guide to Practice should be supplemented by the establishment of a flexible assistance mechanism for States and international organizations that face difficulties in implementation of the legal rules applicable to reservations,

1. *Recalls* that States and international organizations that disagree as to the interpretation, permissibility or effects of a reservation or an objection to a reservation must, first of all, as with any international dispute, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice;

2. *Recommends* that a reservations and objections to reservations assistance mechanism should be established; and

3. *Suggests* that this mechanism should take the form described in the annex to this recommendation.

Annex

1. A reservations and objections to reservations assistance mechanism is hereby established.

2. The mechanism shall consist of 10 government experts, who shall be selected on the basis of their technical competence and their practical experience in public international law and, specifically, treaty law.

3. The mechanism shall meet, as needed, to consider problems related to the interpretation, permissibility and effects of reservations, or objections to and acceptances of reservations, that are submitted to it by concerned States and international organizations. To that end, it may suggest that States trust it to find solutions for the resolution of their disputes. States or international organizations that are parties to a dispute concerning a reservation may undertake to accept the mechanism's proposals for its resolution as compulsory.

4. The mechanism may also provide a State or international organization with technical assistance in formulating reservations to a treaty or objections to reservations formulated by other States or international organizations.

5. In making such proposals, the mechanism shall take into account the provisions on reservations contained in the 1969, 1978 and 1986 Vienna Conventions on the Law of Treaties and the guidelines contained in the Guide to Practice.

IV. Guide to Practice — Instructions

102. In his first report, the Special Rapporteur noted that it was not inevitable for the Commission's work to culminate in draft articles that were intended to become true conventions; he stated his preference for a more flexible instrument that would be easier to coordinate with the existing provisions of the Vienna Conventions.[161] In its discussion of this first report, the Commission approved that approach and endorsed the Special Rapporteur's conclusions on the matter:

> 487. At the end of his statement, the Special Rapporteur summarized as follows the conclusions he had drawn from the Commission's discussion of the topic under consideration:
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> [...]
>
> (b) The Commission should try to adopt a guide to practice in respect of reservations. In accordance with the Commission's statute and its usual practice, this guide would take the form of draft articles whose provisions, together with commentaries, would be guidelines for the practice of States and international organizations in respect of reservations; these provisions would, if necessary, be accompanied by model clauses;[162]
>
> (c) The above arrangements shall be interpreted with flexibility and, if the Commission feels that it must depart from them substantially, it would submit new proposals to the General Assembly on the form the results of its work might take;
>
> (d) There is a consensus in the Commission that there should be no change in the relevant provisions of the 1969, 1978 and 1986 Vienna Conventions.
>
> 3. GENERAL CONCLUSIONS
>
> 488. These conclusions constitute, in the view of the Commission, the result of the preliminary study requested by General Assembly resolutions 48/31 and 49/51. [...][163]

These conclusions have never been called into question by the Commission and have been approved by virtually all delegations to the Sixth Committee of the General Assembly.[164]

103. However, the Sixth Committee's discussions on the topic of reservations to treaties have often shown that States' representatives did not have a clear idea of the Commission's goal or of the exact purpose of the Guide to Practice. And in the

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[161] See the first report of the Special Rapporteur on reservations to treaties (*Yearbook ... 1995*, vol. II, Part One), paras. 170-182.

[162] The inclusion of model clauses in the Guide to Practice was ultimately rejected.

[163] *Yearbook ... 1995*, vol. II, Part Two, paras. 467-468.

[164] Topical summary of the discussion held in the Sixth Committee of the General Assembly during its fiftieth session prepared by the Secretariat: Addendum (A/CN.4/472/Add.1), para. 147; and paragraph 4 of General Assembly resolution 50/45 (11 December 1995).

Commission itself, it has sometimes appeared that certain members, without ever calling into question the initial decisions on the form and purpose of the Guide, did not understand the general concept in the same way as the majority of the members and the Special Rapporteur.

104. In an attempt to dispel such misunderstandings, it is proposed that the following explanation of form, purpose and use should be added at the beginning of the Guide to Practice.

105. It is proposed that an introduction should be added to the Guide to Practice in order to provide an overview and to facilitate its use. This introduction, which would resemble the commentaries to guidelines or the introductions to the various parts or sections of the Guide, might read:[165]

Introduction

1. The Guide to Practice on Reservations to Treaties consists of guidelines that have been adopted by the International Law Commission and are reproduced below, accompanied by commentaries. The commentaries are an integral part of the Guide and an indispensable supplement to the guidelines, which they expand and explain. No summary, however long, could cover all the questions that may arise on this highly technical and complex subject or to provide all useful explanations for practitioners.[166]

2. As its name indicates, the purpose of the Guide to Practice is to provide assistance to practitioners of international law — decision-makers, diplomats and lawyers (including those who plead cases before national courts and tribunals), who are often faced with sensitive problems concerning the permissibility and effects of reservations to treaties — a matter on which the rules contained in the 1969, 1986 and 1978 Vienna Convention's rules have gaps and are often unclear- and, to a lesser extent, interpretative declarations in respect of treaty provisions, of which these Conventions make no mention whatsoever. Despite frequent assumptions to the contrary, its purpose is not — or, in any case, not only — to offer the reader a guide to past (and often uncertain) practice in this area, but rather to direct the user towards solutions that are consistent with existing rules (where they exist) or to the solutions that seem the most likely to result in the progressive development of such rules.

3. In that connection, it should be stressed that while the Guide to Practice, as an instrument — or "official source" — is by no means binding, the extent to which the various norms set out in the guidelines and the various legal norms embodied therein are compulsory in nature varies widely:[167]

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[165] If the Commission deems it necessary, this draft introduction could be referred to the Working Group on Reservations to Treaties, established by the Commission at its sixth-third session; if not, it will be included in the report of the Commission on the work of its sixty-third session and considered by the plenary when the report is adopted.

[166] The present Guide contains 199 [180] guidelines.

[167] This range is too great, and the distribution of guidelines among the various categories is too imprecise, to make it possible to follow a frequent suggestion — made, inter alia, during discussions in the Sixth Committee of the General Assembly — that a distinction should be made between guidelines reflecting *lex lata* and those based on *lege ferenda*.

- Some of them simply reproduce provisions of the Vienna Conventions which set out norms that were either uncontroversial[168] at the time of their inclusion in the Conventions[169] or have since become so; as such, while not compulsory in nature,[170] they are nevertheless required of all States or international organizations, whether or not they are parties to the Conventions;
- Other rules contained in the Vienna Conventions are binding on the parties thereto, but their customary nature is open to question;[171] reproducing them in the Guide to Practice should help establish them as customary rules;
- In some cases, guidelines included in the Guide supplement Convention provisions that are silent on modalities for their implementation but these rules are, in themselves, indisputably customary in nature[172] or are required for obvious logical reasons;[173]
- In other cases, the guidelines address issues on which the Conventions are silent but set out rules that are clearly customary in nature;[174]
- At times, the rules contained in the guidelines are clearly set out *de lege ferenda*[175] and, in some cases, are based on practices that have developed in the margins of the Vienna Conventions;[176]
- Other rules are simply recommendations and are meant only to encourage.[177]

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[168] This is the case, for example, of the fundamental rule that a State or international organization may not formulate a reservation that is incompatible with the object and purpose of the treaty; it is set out in article 19 (c) of the 1969 and 1986 Conventions and reproduced in guideline 3.1.

[169] See, for example, guideline 2.5.1 (Withdrawal of reservations), which reproduces the rules set out in article 22, paragraph 1, and article 23, paragraph 4, of the 1969 and 1986 Vienna Conventions, respectively.

[170] The rule set out in guideline 2.2.1 (Formal confirmation of reservations formulated when signing a treaty), which reproduces, mutatis mutandis, article 23, paragraph 2, of the Vienna Conventions, appears to have acquired customary status since the adoption of the 1969 Convention.

[171] This is largely true of guidelines 2.1.3 (Formulation of a reservation at the international level); 2.1.5 (Communication of reservations), which reproduces, mutatis mutandis, the wording of articles 7 and 23 of the 1986 Vienna Convention; and 2.6.13 [2.6.12] (Time period for formulating an objection).

[172] The definition of reservations “determined” by guideline 3.1.2 may be said to have acquired customary status. See also guideline 3.1.13 [3.1.5.7] (Reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of the treaty).

[173] See, for example, guideline 2.8.2 [2.8.7] (Unanimous acceptance of reservations), which draws the obvious conclusion from article 20, paragraph 3, of the 1969 and 1986 Conventions.

[174] See, for example, guideline 4.4.2 (Absence of effect on rights and obligations under customary international law).

[175] See, for example, guidelines 1.2.2 [1.2.1] (Interpretative declarations formulated jointly) and 3.4.2 (Permissibility of an objection to a reservation).

[176] See, for example, guidelines 4.2.2 (Effect of the establishment of a reservation on the entry into force of the treaty) and 4.3.6 [4.3.7] (Effects of an objection on provisions other than those to which the reservation relates — objections with “intermediate effect”).

[177] These are always drafted in the conditional tense; see, for example, guidelines 2.1.9 (Statement of reasons) [Statement of reasons for reservations] and 2.5.3 (Periodic review of the usefulness of reservations).

4. This last category of the guidelines highlights one of he key characteristics of the Guide to Practice. Such provisions would not have been included in a traditional set of draft articles intended to be transformed, if appropriate, into a treaty: treaties are not drafted in the conditional tense.[178] But the problem here is somewhat different: as the title and the word "guidelines" indicate, it is not a binding instrument but a vade mecum, a "toolbox" in which the negotiators of treaties and those responsible for implementing them should find answers to the practical questions raised by reservations, reactions to reservations and interpretative declarations on the understanding that under positive law, these answers may be more or less correct, depending on the question, and that the commentaries indicate doubts that may exist as to the correctness or appropriateness of a solution.

5. In light of these characteristics, it goes without saying that the rules set out in the Guide to Practice in no way prevent States and international organizations from setting aside, by mutual agreement, those that they consider inappropriate to the purposes of a given treaty. Like the Vienna rules themselves, those set out in the Guide are, at best, residual and voluntary. In any event, since none of them has a binding or *jus cogens* nature, a derogation to which all interested States (or international organizations) consent is always an option.

6. In a consensus decision reached in 1995 and never subsequently challenged, the Commission considered that there was no reason to modify or depart from the relevant provisions of the 1969, 1978 and 1986 Vienna Conventions[179] in drafting the Guide to Practice, which incorporates all of them. But this also had implications for the very concept of the Guide and, in particular, for the commentaries to the guidelines.

7. In so far as the intent is to preserve and apply the Vienna rules, it was necessary to clarify them. For this reason, the commentaries reproduce extensively the *travaux préparatoires* to the three Conventions, which help clarify their meaning and explain the gaps contained therein.

8. Generally speaking, the commentaries are long and detailed. In addition to an analysis of the *travaux préparatoires* to the Vienna Conventions, they include a description of the relevant jurisprudence, practice and doctrine[180] and explanations of the wording that was ultimately adopted; these commentaries provide numerous examples. Their length, which has often been criticized, appears necessary in light of the highly technical and complex nature of the issues raised. The Commission hopes that practitioners will indeed find answers to any questions that arise.[181]

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[178] There may be exceptions to this; see article 7 of the 1971 Convention on Wetlands of International Importance especially as Waterfowl Habitat, concluded in Ramsar (Islamic Republic of Iran), and article 16 of the 2004 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; they are rarely justified.

[179] *Yearbook ... 1995*, vol. II, Part Two, para. 467.

[180] As considerable time had passed between the inclusion of the topic in the Commission's agenda and the final adoption of the Guide to Practice, the commentaries were reviewed and, to the extent possible, updated as at 31 December 2010.

[181] It is also for this reason that the Commission did not hesitate to allow a certain amount of repetition to remain in the commentaries in order to facilitate consultation and use of the Guide to Practice.

9. However, reading the commentaries will be useful only where the answer to a question is not provided in the text of the guidelines (or where, in a specific case, the guideline is difficult to interpret). For this reason, the guidelines appear, without commentary, at the beginning of the Guide to Practice and the user should refer first to their titles, which are designed to give as clear as possible an idea of their content.[182]

10. The Guide to Practice is divided into five parts (numbered 1 to 5), which follow a logical order:

- Part 1 is devoted to the definition of reservations and interpretative declarations and to the distinction between these two types of unilateral statement; it also includes an overview of various unilateral statements, made in connection with a treaty, that are neither reservations nor interpretative declarations and possible alternatives to both; as expressly stated in guideline 1.6 [1.8], "The[se] definitions ... are without prejudice to the validity and [legal] effects" of the statements covered by Part 1;
- Part 2 sets out the form and procedure to be used in formulating reservations and interpretative declarations and reactions thereto (objections to and acceptances of reservations and approval or recharacterization of, or opposition to, interpretative declarations);
- Part 3 concerns the permissibility of reservations and interpretative declarations and reactions thereto and sets out the criteria for the assessment of permissibility; these are illustrated by examples, with commentary, of the types of reservations that most often give rise to differences of opinion among States regarding their permissibility. Some guidelines also specify the modalities for assessing the permissibility of reservations and the consequences of their impermissibility;
- Part 4 is devoted to the legal effects produced by reservations and interpretative declarations, depending on whether they are valid (in which case a reservation is "established" if it has been accepted) or not; this part also analyses the effects of objections to and acceptances of reservations;
- Part 5 supplements the only provision of the 1978 Vienna Convention on Succession of States in respect of Treaties that deals with reservations — article 20 on the fate of reservations in the case of succession of States by a newly independent State — and extrapolates and adapts solutions for cases of uniting or separation of States; this last part also covers the issues raised by objections to or acceptances of reservations and by interpretative declarations in relation to succession of States;
- Lastly, two annexes reproduce the text of the recommendations adopted by the Commission on the subject of, on the one hand, the reservations dialogue and, on the other, technical assistance and assistance with the settlement of disputes concerning reservations.

[182] The Working Group on Reservations to Treaties, which met during the first part of the sixty-third session of the Commission in 2011, paid particular attention to this matter.

11. Within each part, the guidelines are divided into sections (introduced by a two-digit number where the first represents the part and the second the section within that part[183]). In principle, the guidelines carry a three-digit number within each section.[184]*

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[183] For example, section 3.4 deals with the "Permissibility of reactions to reservations"; the number 3 indicates that it falls under Part 3 and the number 4 refers to section 4 of that Part. Where a section is introduced by a guideline of a very general nature that covers its entire content, that guideline has the same title and the same number as the section itself (this is true, for example, of guideline 3.5 ("Permissibility of an interpretative declaration").

[184] In the rare case of the guidelines designed to illustrate, through examples, the manner of determining a reservation's compatibility with the object and purpose of the treaty (the subject of guideline 3.1.6 [3.1.5]), these illustrative guidelines have a four-digit number. Thus, in the case of guideline 3.1.6.1 [3.1.5.2] (Vague and general reservations), the number 3 refers to Part 3; the first number 1 refers to section 1 of this part ("Permissible reservations"); the number 6 [5] refers to the more general guideline 3.1.6 [3.1.5] (Determination of the object and purpose of the treaty) and the second number 1 indicates that this is the first example illustrating that general guideline.

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