



General Assembly

Distr.: Limited
30 July 2010
English
Original: French

International Law Commission

Sixty-second session

Geneva, 3 May–4 June and 5 July–6 August 2010

Draft report of the International Law Commission on the work of its sixty-second session

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Chapter IV Reservations to treaties

Addendum

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1. The text of the draft guidelines¹ provisionally adopted so far by the Commission is reproduced below.

Reservations to treaties

Guide to practice

Explanatory note²

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 reservations³

“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]⁴ Object of reservations⁵

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.

1.1.2 Instances in which reservations may be formulated⁶

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 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.

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

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

⁴ 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.

⁵ 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.

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

1.1.3 [1.1.8] Reservations having territorial scope⁷

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 application⁸

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 author⁹

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.

1.1.6 Statements purporting to discharge an obligation by equivalent means¹⁰

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.

1.1.7 [1.1.1] Interpretative declarations formulated jointly¹¹

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 clauses¹²

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.

⁷ For the commentary to this guideline, see *ibid.*, pp. 206–209.

⁸ For the commentary to this guideline, see *ibid.*, pp. 209–210.

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

¹⁰ For the commentary to this guideline, see *ibid.*, pp. 222–223.

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

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

1.2 Definition of interpretative declarations¹³

“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.

1.2.1 [1.2.4] Conditional interpretative declarations¹⁴

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 jointly¹⁵

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 declarations¹⁶

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 declarations¹⁷

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.

1.3.2 [1.2.2] Phrasing and name¹⁸

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.

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

¹⁴ For the commentary to this guideline, see *ibid.*, pp. 240–249.

¹⁵ For the commentary to this guideline, see *ibid.*, pp. 249–252.

¹⁶ For the commentary to this guideline, see *ibid.*, pp. 252–253.

¹⁷ For the commentary to this guideline, see *ibid.*, pp. 254–260.

¹⁸ For the commentary to this guideline, see *ibid.*, pp. 260–266.

1.3.3 [1.2.3] Formulation of a unilateral statement when a reservation is prohibited¹⁹

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 declarations²⁰

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 commitments²¹

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.

1.4.2 [1.1.6] Unilateral statements purporting to add further elements to a treaty²²

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-recognition²³

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 policy²⁴

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 level²⁵

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

¹⁹ For the commentary to this guideline, see *ibid.*, pp. 268–270.

²⁰ For the commentary to this guideline, see *ibid.*, pp. 268–270.

²¹ For the commentary to this guideline, see *ibid.*, pp. 270–273.

²² For the commentary to this guideline, see *ibid.*, pp. 273–274.

²³ For the commentary to this guideline, see *ibid.*, pp. 275–280.

²⁴ For the commentary to this guideline, see *ibid.*, pp. 280–284.

²⁵ For the commentary to this guideline, see *ibid.*, pp. 284–289.

obligations towards the other Contracting Parties, constitutes an informative statement which is outside the scope of the present Guide to Practice.

1.4.6 [1.4.6, 1.4.7] Unilateral statements made under an optional clause²⁶

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 treaty²⁷

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 treaties²⁸

1.5.1 [1.1.9] “Reservations” to bilateral treaties²⁹

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.

1.5.2 [1.2.7] Interpretative declarations in respect of bilateral treaties³⁰

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 party³¹

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.

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

²⁷ For the commentary to this guideline, see *ibid.*, pp. 247–252.

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

²⁹ For the commentary to this guideline, see *ibid.*, pp. 290–302.

³⁰ For the commentary to this guideline, see *ibid.*, pp. 302–306.

³¹ For the commentary to this guideline, see *ibid.*, pp. 306–307.

1.6 Scope of definitions³²

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 declarations³³**1.7.1 [1.7.1, 1.7.2, 1.7.3, 1.7.4] Alternatives to reservations**³⁴

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
- 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 declarations³⁵

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**³⁶

A reservation must be formulated in writing.

2.1.2 Form of formal confirmation³⁷

Formal confirmation of a reservation must be made in writing.

2.1.3 Formulation of a reservation at the international level³⁸

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:

³² 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.

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

³⁴ For the commentary to this guideline, see *ibid.*, pp. 253–269.

³⁵ For the commentary to this guideline, see *ibid.*, pp. 270–272.

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

³⁷ For the commentary to this guideline, see *ibid.*, pp. 67–69.

³⁸ 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 reservations³⁹

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.

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 reservations⁴⁰

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 reservations⁴¹

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:

³⁹ For the commentary to this guideline, see *ibid.*, pp. 75–79.

⁴⁰ For the commentary to this guideline, see *ibid.*, pp. 80–93.

⁴¹ For the commentary to this guideline, see *ibid.*, *Sixty-third Session, Supplement No. 10 (A/63/10)*, pp. 174–184.

(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.

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 depositaries⁴²

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 impermissible reservations⁴³

Where, in the opinion of the depositary, a reservation is manifestly impermissible, the depositary shall draw the attention of the author of the reservation to what, in the depositary's view, constitutes the grounds for the impermissibility 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.

2.1.9 Statement of reasons⁴⁴

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

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

⁴³ 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.

⁴⁴ For the commentary to this guideline, see *ibid.*, *Sixty-third Session, Supplement No. 10 (A/63/10)*, pp. 184–189.

2.2 Confirmation of reservations

2.2.1 Formal confirmation of reservations formulated when signing a treaty⁴⁵

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 treaty⁴⁶

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.

2.2.3 [2.2.4] Reservations formulated upon signature when a treaty expressly so provides⁴⁷

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 ...⁴⁸.

2.3 Late reservations

2.3.1 Late formulation of a reservation⁴⁹

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 reservation⁵⁰

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 reservation⁵¹

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.

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

⁴⁶ For the commentary to this guideline, see *ibid.*, pp. 472–474.

⁴⁷ For the commentary to this guideline, see *ibid.*, pp. 474–477.

⁴⁸ Section 2.3 proposed by the Special Rapporteur deals with the late formulation of reservations.

⁴⁹ 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.

⁵⁰ For the commentary to this guideline, see *ibid.*, pp. 490–493.

⁵¹ 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 reservations⁵²

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 reservation⁵³

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 declarations⁵⁴

2.4.0 Form of interpretative declarations⁵⁵

An interpretative declaration should preferably be formulated in writing.

2.4.1 Formulation of interpretative declarations⁵⁶

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.

[2.4.2 [2.4.1 *bis*] Formulation of an interpretative declaration at the internal level⁵⁷

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 formulated⁵⁸

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.

⁵² For the commentary to this guideline, see *ibid.*, pp. 495–499.

⁵³ For the commentary to this guideline, see *ibid.*, *Fifty-ninth Session, Supplement No. 10 (A/59/10)*, pp. 269–274.

⁵⁴ For the commentary to this guideline, see *ibid.*, *Fifty-seventh Session, Supplement No. 10 (A/57/10)*, p. 115.

⁵⁵ For the commentary to this guideline, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 10, (A/64/10)*, pp. 221–223.

⁵⁶ For the commentary to this guideline, see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10, (A/57/10)*, pp. 115–116.

⁵⁷ For the commentary to this guideline, see *ibid.*, pp. 117–118.

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

2.4.3 bis Communication of interpretative declarations⁵⁹

The communication of written interpretative declarations should be made, *mutatis mutandis*, in accordance with the procedure established in 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 treaty⁶⁰

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.

2.4.5 [2.4.4] Formal confirmation of conditional interpretative declarations formulated when signing a treaty⁶¹

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 declaration⁶²

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 declarations⁶³

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.]

⁵⁹ For the commentary to this guideline, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 10*, (A/64/10), pp. 223–224.

⁶⁰ For the commentary to this guideline, see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10*, (A/56/10), pp. 501–502.

⁶¹ For the commentary to this guideline, see *ibid.*, pp. 502–503.

⁶² For the commentary to this guideline, see *ibid.*, pp. 503–505.

⁶³ 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 declaration⁶⁴

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 declaration⁶⁵

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 declaration⁶⁶

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 reservations⁶⁷**

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.

2.5.2 Form of withdrawal⁶⁸

The withdrawal of a reservation must be formulated in writing.

2.5.3 Periodic review of the usefulness of reservations⁶⁹

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.

⁶⁴ 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.

⁶⁵ For the commentary to this guideline, see *ibid.*, *Fifty-ninth Session, Supplement No. 10 (A/59/10)*, pp. 275–277.

⁶⁶ For the commentary to this guideline, see *ibid.*, pp. 277–278.

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

⁶⁸ For the commentary to this guideline, see *ibid.*, pp. 201–207.

⁶⁹ For the commentary to this guideline, see *ibid.*, pp. 207–209.

2.5.4 [2.5.5] Formulation of the withdrawal of a reservation at the international level⁷⁰

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:

(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 reservations⁷¹

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 reservation⁷²

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.

2.5.7 [2.5.7, 2.5.8] Effect of withdrawal of a reservation⁷³

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

⁷⁰ For the commentary to this guideline, see *ibid.*, pp. 210–218.

⁷¹ For the commentary to this guideline, see *ibid.*, pp. 219–221.

⁷² For the commentary to this guideline, see *ibid.*, pp. 221–226.

⁷³ For the commentary to this guideline, see *ibid.*, pp. 227–231.

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 reservation⁷⁴

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. Deferral of the effective date of the withdrawal of a reservation⁷⁵

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 ... [months] [days] after the date of receipt of the notification by [the depositary].

B. Earlier effective date of withdrawal of a reservation⁷⁶

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 reservation⁷⁷

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 reservation⁷⁸

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 reservation⁷⁹

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.

⁷⁴ For the commentary to this guideline, see *ibid.*, pp. 231–239.

⁷⁵ For the commentary to this model clause, see *ibid.*, p. 240.

⁷⁶ For the commentary to this model clause, see *ibid.*, pp. 240–241.

⁷⁷ For the commentary to this model clause, see *ibid.*, pp. 241–242.

⁷⁸ For the commentary to this guideline, see *ibid.*, pp. 242–244.

⁷⁹ 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 reservation⁸⁰

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 declaration⁸¹

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 declaration⁸²

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 reservations⁸³

“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 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 reservation⁸⁴

“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 Freedom to formulate objections⁸⁵

A State or international organization may formulate an objection to a reservation irrespective of the permissibility of the reservation.

⁸⁰ For the commentary to this guideline, see *ibid.*, pp. 256–259.

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

⁸² For the commentary to this guideline, see *ibid.*, p. 280.

⁸³ For the commentary to this guideline, see *ibid.*, *Sixtieth Session, Supplement No. 10 (A/60/10)*, pp. 186–202.

⁸⁴ For the commentary to this guideline, see *ibid.*, pp. 202–203.

⁸⁵ For the commentary to this guideline, see sect. C.2 below.

2.6.4 Freedom to oppose the entry into force of the treaty *vis-à-vis* the author of the reservation⁸⁶

A State or international organization that formulates an objection to a reservation may oppose the entry into force of the treaty as between itself and the author of the reservation.

2.6.5 Author⁸⁷

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 formulation⁸⁸

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

2.6.7 Written form⁸⁹

An objection must be formulated in writing.

2.6.8 Expression of intention to preclude the entry into force of the treaty⁹⁰

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 objections⁹¹

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 reasons⁹²

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

⁸⁶ For the commentary to this guideline, see sect. C.2 below.

⁸⁷ For the commentary to this guideline, see *Official Records of the General Assembly, Sixty-third Session, Supplement No. 10 (A/63/10)*, pp. 189–193.

⁸⁸ For the commentary to this guideline, see *ibid.*, pp. 193–195.

⁸⁹ For the commentary to this guideline, see *ibid.*, pp. 195–197.

⁹⁰ For the commentary to this guideline, see *ibid.*, pp. 197–200.

⁹¹ For the commentary to this guideline, see *ibid.*, pp. 200–203.

⁹² For the commentary to this guideline, see *ibid.*, pp. 203–206.

2.6.11 Non-requirement of confirmation of an objection made prior to formal confirmation of a reservation⁹³

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.

2.6.12 Requirement of confirmation of an objection formulated prior to the expression of consent to be bound by a treaty⁹⁴

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 objection⁹⁵

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 objections⁹⁶

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

2.6.15 Late objections⁹⁷

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.

2.7 Withdrawal and modification of objections to reservations⁹⁸**2.7.1 Withdrawal of objections to reservations⁹⁹**

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 reservations¹⁰⁰

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

⁹³ For the commentary to this guideline, see *ibid.*, pp. 206–208.

⁹⁴ For the commentary to this guideline, see *ibid.*, pp. 208–213.

⁹⁵ For the commentary to this guideline, see *ibid.*, pp. 213–217.

⁹⁶ For the commentary to this guideline, see *ibid.*, pp. 218–221.

⁹⁷ For the commentary to this guideline, see *ibid.*, pp. 221–225.

⁹⁸ For the commentary, see *ibid.*, pp. 225–228.

⁹⁹ For the commentary to this guideline, see *ibid.*, pp. 228–229.

¹⁰⁰ For the commentary to this guideline, see *ibid.*, p. 230.

2.7.3 Formulation and communication of the withdrawal of objections to reservations¹⁰¹

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 objection¹⁰²

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 objection¹⁰³

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.

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 reservation¹⁰⁴

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 objection¹⁰⁵

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 objection¹⁰⁶

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 reservation¹⁰⁷

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.

¹⁰¹ For the commentary to this guideline, see *ibid.*, p. 230.

¹⁰² For the commentary to this guideline, see *ibid.*, pp. 232–233.

¹⁰³ For the commentary to this guideline, see *ibid.*, pp. 233–236.

¹⁰⁴ For the commentary to this guideline, see *ibid.*, pp. 236–237.

¹⁰⁵ For the commentary to this guideline, see *ibid.*, pp. 237–240.

¹⁰⁶ For the commentary to this guideline, see *ibid.*, pp. 240–241.

¹⁰⁷ For the commentary to this guideline, see *ibid.*, pp. 241–243.

2.8 Formulation of acceptances of reservations

2.8.0 [2.8] Forms of acceptance of reservations¹⁰⁸

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 reservations¹⁰⁹

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 reservations¹¹⁰

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 reservation¹¹¹

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 acceptance¹¹²

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

2.8.5 Procedure for formulating express acceptance¹¹³

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 reservation¹¹⁴

An express acceptance of 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.

2.8.7 Acceptance of a reservation to the constituent instrument of an international organization¹¹⁵

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.

¹⁰⁸ For the commentary to this guideline, see *ibid.*, pp. 243–248.

¹⁰⁹ For the commentary to this guideline, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 10, (A/64/10)*, pp. 225–229.

¹¹⁰ For the commentary to this guideline, see *ibid.*, pp. 230–232.

¹¹¹ For the commentary to this guideline, see *ibid.*, pp. 232–235.

¹¹² For the commentary to this guideline, see *ibid.*, pp. 235–236.

¹¹³ For the commentary to this guideline, see *ibid.*, p. 236.

¹¹⁴ For the commentary to this guideline, see *ibid.*, p. 237–238.

¹¹⁵ For the commentary to this guideline, see *ibid.*, pp. 238–242.

2.8.8 Organ competent to accept a reservation to a constituent instrument¹¹⁶

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.

2.8.9 Modalities of the acceptance of a reservation to a constituent instrument¹¹⁷

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 force¹¹⁸

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 instrument¹¹⁹

Guideline 2.8.7 does not preclude States or international organizations that are members of an international organization from taking a position on the permissibility 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 reservation¹²⁰

Acceptance of a reservation cannot be withdrawn or amended.

2.9 Formulation of reactions to interpretative declarations**2.9.1 Approval of an interpretative declaration**¹²¹

“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.

¹¹⁶ For the commentary to this guideline, see *ibid.*, pp. 242–243.

¹¹⁷ For the commentary to this guideline, see *ibid.*, pp. 244–246.

¹¹⁸ For the commentary to this guideline, see *ibid.*, pp. 246–249.

¹¹⁹ For the commentary to this guideline, see *ibid.*, pp. 250–251.

¹²⁰ For the commentary to this guideline, see *ibid.*, pp. 252–253.

¹²¹ For the commentary to this guideline, see *ibid.*, pp. 253–256.

2.9.2 Opposition to an interpretative declaration¹²²

“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 declaration¹²³

“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.

2.9.4 Freedom to formulate approval, opposition or recharacterization¹²⁴

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 Form of approval, opposition and recharacterization¹²⁵

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 recharacterization¹²⁶

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 recharacterization¹²⁷

An approval, opposition or recharacterization in respect of an interpretative declaration should, *mutatis mutandis*, be formulated and communicated in accordance with 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 opposition¹²⁸

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

Notwithstanding 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

¹²² For the commentary to this guideline, see *ibid.*, pp. 256–263.

¹²³ For the commentary to this guideline, see *ibid.*, pp. 263–268.

¹²⁴ For the commentary to this guideline, see *ibid.*, p. 269.

¹²⁵ For the commentary to this guideline, see *ibid.*, pp. 270–272.

¹²⁶ For the commentary to this guideline, see *ibid.*, pp. 272–273.

¹²⁷ For the commentary to this guideline, see *ibid.*, p. 274.

¹²⁸ For the commentary to this guideline, see *ibid.*, pp. 275–279.

of the States or international organizations concerned, taking into account all relevant circumstances.

2.9.9 Silence with respect to an interpretative declaration¹²⁹

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 declarations¹³⁰

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 reservations¹³¹

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 treaty¹³²

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 reservations¹³³

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.

¹²⁹ For the commentary to this guideline, see *ibid.*, pp. 279–280.

¹³⁰ For the commentary to this guideline, see *ibid.*, pp. 281–283.

¹³¹ For the commentary to this guideline, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)*, pp. 327–333.

¹³² For the commentary to this guideline, see *ibid.*, pp. 333–340.

¹³³ For the commentary to this guideline, see *ibid.*, pp. 340–350.

3.1.3 Permissibility of reservations not prohibited by the treaty¹³⁴

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 reservations¹³⁵

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 treaty¹³⁶

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 treaty¹³⁷

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 reservations¹³⁸

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 norm¹³⁹

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.

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*¹⁴⁰

A reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law.

¹³⁴ For the commentary to this guideline, see *ibid.*, pp. 350–354.

¹³⁵ For the commentary to this guideline, see *ibid.*, pp. 354–356.

¹³⁶ For the commentary to this guideline, see *ibid.*, *Sixty-second Session, Supplement No. 10 (A/62/10)*, pp. 66–77.

¹³⁷ For the commentary to this guideline, see *ibid.*, pp. 77–82.

¹³⁸ For the commentary to this guideline, see *ibid.*, pp. 82–88.

¹³⁹ For the commentary to this guideline, see *ibid.*, pp. 89–98.

¹⁴⁰ For the commentary to this guideline, see *ibid.*, pp. 99–104.

3.1.10 Reservations to provisions relating to non-derogable rights¹⁴¹

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 law¹⁴²

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 treaties¹⁴³

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 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 treaty¹⁴⁴

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 permissibility of reservation¹⁴⁵

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

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

¹⁴¹ For the commentary to this guideline, see *ibid.*, pp. 104–109.

¹⁴² For the commentary to this guideline, see *ibid.*, pp. 109–113.

¹⁴³ For the commentary to this guideline, see *ibid.*, pp. 113–116.

¹⁴⁴ For the commentary to this guideline, see *ibid.*, pp. 117–121.

¹⁴⁵ For the commentary to this guideline, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 10 (A/64/10)*, pp. 284–296.

3.2.1 Competence of the treaty monitoring bodies to assess the permissibility of reservations¹⁴⁶

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.

3.2.2 Specification of the competence of treaty monitoring bodies to assess the permissibility of reservations¹⁴⁷

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 permissibility 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 bodies¹⁴⁸

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 permissibility of the reservations that they have formulated.

3.2.4 Bodies competent to assess the permissibility of reservations in the event of the establishment of a treaty monitoring body¹⁴⁹

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 permissibility 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 permissibility of reservations¹⁵⁰

When a dispute settlement body is competent to adopt decisions binding upon the parties to a dispute, and the assessment of the permissibility 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.

3.3 Consequences of the non-permissibility of a reservation¹⁵¹

A reservation formulated in spite of a prohibition arising from the provisions of the treaty or in spite of its incompatibility with the object and the purpose of the treaty is impermissible, without there being any need to distinguish between the consequences of these grounds for non-permissibility.

¹⁴⁶ For the commentary to this guideline, see *ibid.*, pp. 296–297.

¹⁴⁷ For the commentary to this guideline, see *ibid.*, pp. 298–299.

¹⁴⁸ For the commentary to this guideline, see *ibid.*, pp. 299–301.

¹⁴⁹ For the commentary to this guideline, see *ibid.*, p. 301.

¹⁵⁰ For the commentary to this guideline, see *ibid.*, p. 302.

¹⁵¹ For the commentary to this guideline, see *ibid.*, pp. 302–308.

3.3.1 Non-permissibility of reservations and international responsibility¹⁵²

The formulation of an impermissible reservation produces its consequences pursuant to the law of treaties and does not, in itself, engage the international responsibility of the State or international organization which has formulated it.

3.3.2 [3.3.3] Effect of individual acceptance of an impermissible reservation¹⁵³

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

3.3.3 [3.3.4] Effect of collective acceptance of an impermissible reservation¹⁵⁴

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.

3.4 Permissibility of reactions to reservations¹⁵⁵**3.4.1 Permissibility of the acceptance of a reservation¹⁵⁶**

The express acceptance of an impermissible reservation is itself impermissible.

3.4.2 Permissibility of an objection to a reservation¹⁵⁷

An objection to a reservation by which a State or an international organization purports to exclude in its relations with the author of the reservation the application of provisions of the treaty to which the reservation does not relate is only permissible if:

- (1) The additional provisions thus excluded have a sufficient link with the provisions to which the reservation relates; and
- (2) The objection would not defeat the object and purpose of the treaty in the relations between the author of the reservation and the author of the objection.

3.5 Permissibility of an interpretative declaration¹⁵⁸

A State or an international organization may formulate an interpretative declaration unless the interpretative declaration is prohibited by the treaty or is incompatible with a peremptory norm of general international law.

3.5.1 Permissibility of an interpretative declaration which is in fact a reservation¹⁵⁹

If a unilateral statement which purports to be an interpretative declaration is in fact a reservation, its permissibility must be assessed in accordance with the provisions of guidelines 3.1 to 3.1.13.

¹⁵² For the commentary to this guideline, see *ibid.*, pp. 309–311.

¹⁵³ For the commentary to this guideline, see sect. C.2 below.

¹⁵⁴ For the commentary to this guideline, see sect. C.2 below.

¹⁵⁵ For the commentary to this guideline, see sect. C.2 below.

¹⁵⁶ For the commentary to this guideline, see sect. C.2 below.

¹⁵⁷ For the commentary to this guideline, see sect. C.2 below.

¹⁵⁸ For the commentary to this guideline, see sect. C.2 below.

¹⁵⁹ For the commentary to this guideline, see sect. C.2 below.

[3.5.2 Conditions for the permissibility of a conditional interpretative declaration¹⁶⁰

The permissibility of a conditional interpretative declaration must be assessed in accordance with the provisions of guidelines 3.1 to 3.1.13.]

[3.5.3 Competence to assess the permissibility of a conditional interpretative declaration¹⁶¹

The provisions of guidelines 3.2 to 3.2.4 apply, *mutatis mutandis*, to conditional interpretative declarations.]

3.6. Permissibility of reactions to interpretative declarations¹⁶²

Subject to the provisions of guidelines 3.6.1 and 3.6.2, an approval of, opposition to, or recharacterization of, an interpretative declaration shall not be subject to any conditions for permissibility.

3.6.1 Permissibility of approvals of interpretative declarations¹⁶³

An approval of an impermissible interpretative declaration is itself impermissible.

3.6.2 Permissibility of oppositions to interpretative declarations¹⁶⁴

An opposition to an interpretative declaration is impermissible to the extent that it does not comply with the conditions for permissibility of an interpretative declaration set forth in guideline 3.5.

4. Legal effects of reservations and interpretative declarations¹⁶⁵

4.1 Establishment of a reservation with regard to another State or organization¹⁶⁶

A reservation formulated by a State or an international organization is established with regard to a contracting State or contracting organization if it is permissible and was formulated in accordance with the required form and procedures, and if that contracting State or contracting organization has accepted it.

4.1.1 Establishment of a reservation expressly authorized by a treaty¹⁶⁷

A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States and contracting organizations, unless the treaty so provides.

A reservation expressly authorized by a treaty is established with regard to the other contracting States and contracting organizations if it was formulated in accordance with the required form and procedures.

¹⁶⁰ For the commentary to this guideline, see sect. C.2 below.

¹⁶¹ For the commentary to this guideline, see sect. C.2 below.

¹⁶² For the commentary to this guideline, see sect. C.2 below.

¹⁶³ For the commentary to this guideline, see sect. C.2 below.

¹⁶⁴ For the commentary to this guideline, see sect. C.2 below.

¹⁶⁵ For the commentary to this guideline, see sect. C.2 below.

¹⁶⁶ For the commentary to this guideline, see sect. C.2 below.

¹⁶⁷ For the commentary to this guideline, see sect. C.2 below.

4.1.2 Establishment of a reservation to a treaty which has to be applied in its entirety¹⁶⁸

A reservation to a treaty in respect of which it appears from the limited number of negotiating States and organizations and the object and purpose of the treaty, that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty is established with regard to the other contracting States and contracting organizations if it is permissible and was formulated in accordance with the required form and procedures, and if all the contracting States and contracting organizations have accepted it.

4.1.3 Establishment of a reservation to a constituent instrument of an international organization¹⁶⁹

A reservation to a treaty which is a constituent instrument of an international organization is established with regard to the other contracting States and contracting organizations if it is permissible and was formulated in accordance with the required form and procedures, and if it has been accepted in conformity with guidelines 2.8.7 to 2.8.10.

4.2 Effects of an established reservation¹⁷⁰**4.2.1 Status of the author of an established reservation**¹⁷¹

As soon as a reservation is established in accordance with guidelines 4.1 to 4.1.3, its author becomes a contracting State or contracting organization to the treaty.

4.2.2 Effect of the establishment of a reservation on the entry into force of a treaty¹⁷²

1. When a treaty has not yet entered into force, the author of a reservation shall be included in the number of contracting States and contracting organizations required for the treaty to enter into force once the reservation is established.
2. The author of the reservation may however be included at an earlier date in the number of contracting States and contracting organizations required for the treaty to enter into force, if no contracting State or contracting organization is opposed in a particular case.

4.2.3 Effect of the establishment of a reservation on the status of the author as a party to the treaty¹⁷³

The establishment of a reservation constitutes its author a party to the treaty in relation to contracting States and contracting organizations in respect of which the reservation is established if or when the treaty is in force.

4.2.4 Effect of an established reservation on treaty relations¹⁷⁴

1. A reservation established with regard to another party excludes or modifies for the reserving State or international organization in its relations with that other party the legal effect of the provisions of the treaty to which the reservation relates or of the treaty as a whole with respect to certain specific aspects, to the extent of the reservation.

¹⁶⁸ For the commentary to this guideline, see sect. C.2 below.

¹⁶⁹ For the commentary to this guideline, see sect. C.2 below.

¹⁷⁰ For the commentary to this guideline, see sect. C.2 below.

¹⁷¹ For the commentary to this guideline, see sect. C.2 below.

¹⁷² For the commentary to this guideline, see sect. C.2 below.

¹⁷³ For the commentary to this guideline, see sect. C.2 below.

¹⁷⁴ For the commentary to this guideline, see sect. C.2 below.

2. To the extent that an established reservation excludes the legal effect of certain provisions of a treaty, the author of that reservation has neither rights nor obligations under those provisions in its relations with the other parties with regard to which the reservation is established. Those other parties shall likewise have neither rights nor obligations under those provisions in their relations with the author of the reservation.

3. To the extent that an established reservation modifies the legal effect of certain provisions of a treaty, the author of that reservation has rights and obligations under those provisions, as modified by the reservation, in its relations with the other parties with regard to which the reservation is established. Those other parties shall have rights and obligations under those provisions, as modified by the reservation, in their relations with the author of the reservation.

4.2.5 Non-reciprocal application of obligations to which a reservation relates¹⁷⁵

Insofar as the obligations under the provisions to which the reservation relates are not subject to reciprocal application in view of the nature of the obligation or the object and purpose of the treaty, the content of the obligations of the parties other than the author of the reservation remains unaffected. The content of the obligations of those parties likewise remains unaffected when reciprocal application is not possible because of the content of the reservation.

4.3 Effect of an objection to a valid reservation¹⁷⁶

Unless the reservation has been established with regard to an objecting State or organization, the formulation of an objection to a valid reservation precludes the reservation from having its intended effects as against that State or international organization.

4.3.1 Effect of an objection on the entry into force of the treaty as between the author of the objection and the author of a reservation¹⁷⁷

An objection by a contracting State or by a contracting organization to a valid reservation does not preclude the entry into force of the treaty as between the objecting State or organization and the reserving State or organization, except in the case mentioned in guideline 4.3.4.

4.3.2 Entry into force of the treaty between the author of a reservation and the author of an objection¹⁷⁸

The treaty enters into force between the author of a valid reservation and the objecting contracting State or contracting organization as soon as the author of the reservation has become a contracting State or a contracting organization in accordance with guideline 4.2.1 and the treaty has entered into force.

¹⁷⁵ For the commentary to this guideline, see sect. C.2 below.

¹⁷⁶ For the commentary to this guideline, see sect. C.2 below.

¹⁷⁷ For the commentary to this guideline, see sect. C.2 below.

¹⁷⁸ For the commentary to this guideline, see sect. C.2 below.

4.3.3 Non-entry into force of the treaty for the author of a reservation when unanimous acceptance is required¹⁷⁹

If unanimous acceptance is required for the establishment of the reservation, any objection by a contracting State or by a contracting organization to a valid reservation precludes the entry into force of the treaty for the reserving State or organization.

4.3.4 Non-entry into force of the treaty as between the author of a reservation and the author of an objection with maximum effect¹⁸⁰

An objection by a contracting State or by a contracting organization to a valid reservation precludes the entry into force of the treaty as between the objecting State or organization and the reserving State or organization, if the objecting State or organization has definitely expressed an intention to that effect in accordance with guideline 2.6.8.

4.3.5 Effects of an objection on treaty relations¹⁸¹

1. When a State or an international organization objecting to a valid reservation has not opposed the entry into force of the treaty between itself and the reserving State or organization, the provisions to which the reservation relates do not apply as between the author of the reservation and the objecting State or organization, to the extent of the reservation.

2. To the extent that a valid reservation purports to exclude the legal effect of certain provisions of the treaty, when a contracting State or a contracting organization has raised an objection to it but has not opposed the entry into force of the treaty between itself and the author of the reservation, the objecting State or organization and the author of the reservation are not bound, in their treaty relations, by the provisions to which the reservation relates.

3. To the extent that a valid reservation purports to modify the legal effect of certain provisions of the treaty, when a contracting State or a contracting organization has raised an objection to it but has not opposed the entry into force of the treaty between itself and the author of the reservation, the objecting State or organization and the author of the reservation are not bound, in their treaty relations, by the provisions of the treaty as intended to be modified by the reservation.

4. All the provisions of the treaty other than those to which the reservation relates shall remain applicable as between the reserving State or organization and the objecting State or organization.

4.3.6 Effect of an objection on provisions other than those to which the reservation relates¹⁸²

1. A provision of the treaty to which the reservation does not relate, but which has a sufficient link with the provisions to which the reservation does relate, is not applicable in the treaty relations between the author of the reservation and the author of an objection formulated in accordance with guideline 3.4.2.

2. The reserving State or organization may, within a period of 12 months following the notification of such an objection, oppose the entry into force of the treaty between itself and the objecting State or organization. In the absence of such opposition, the treaty shall apply

¹⁷⁹ For the commentary to this guideline, see sect. C.2 below.

¹⁸⁰ For the commentary to this guideline, see sect. C.2 below.

¹⁸¹ For the commentary to this guideline, see sect. C.2 below.

¹⁸² For the commentary to this guideline, see sect. C.2 below.

between the author of the reservation and the author of the objection to the extent provided by the reservation and the objection.

4.3.7 Right of the author of a valid reservation not to be compelled to comply with the treaty without the benefit of its reservation¹⁸³

The author of a reservation which is permissible and which has been formulated in accordance with the required form and procedures cannot be compelled to comply with the provisions of the treaty without the benefit of its reservation.

4.4 Effects of a reservation on rights and obligations outside of the treaty

4.4.1 Absence of effect on rights and obligations under another treaty¹⁸⁴

A reservation, acceptance of it or objection to it neither modifies nor excludes the respective rights and obligations of their authors under another treaty to which they are parties.

4.4.2 Absence of effect on rights and obligations under customary international law¹⁸⁵

A reservation to a treaty provision which reflects a rule of customary international law does not of itself affect the rights and obligations under that rule, which shall continue to apply as such between the reserving State or organization and other States or international organizations which are bound by that rule.

4.4.3 Absence of effect on a peremptory norm of general international law (*jus cogens*)¹⁸⁶

A reservation to a treaty provision which reflects a peremptory norm of general international law (*jus cogens*) does not affect the binding nature of that norm, which shall continue to apply as such between the reserving State or organization and other States or international organizations.

4.5 Consequences of an invalid reservation

4.5.1 [4.5.1 and 4.5.2] Nullity of an invalid reservation¹⁸⁷

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 treaty¹⁸⁸

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:

¹⁸³ For the commentary to this guideline, see sect. C.2 below.

¹⁸⁴ For the commentary to this guideline, see sect. C.2 below.

¹⁸⁵ For the commentary to this guideline, see sect. C.2 below.

¹⁸⁶ For the commentary to this guideline, see sect. C.2 below.

¹⁸⁷ For the commentary to this guideline, see sect. C.2 below.

¹⁸⁸ For the commentary to this guideline, see sect. C.2 below.

- 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 reservation¹⁸⁹

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 treaty¹⁹⁰

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 declaration¹⁹¹

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 author¹⁹²

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.

¹⁸⁹ For the commentary to this guideline, see sect. C.2 below.

¹⁹⁰ For the commentary to this guideline, see sect. C.2 below.

¹⁹¹ For the commentary to this guideline, see sect. C.2 below.

¹⁹² For the commentary to this guideline, see sect. C.2 below.

4.7.3 Effect of an interpretative declaration approved by all the contracting States and contracting organizations¹⁹³

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.

5. Reservations, acceptances of and objections to reservations, and interpretative declarations in the case of succession of States¹⁹⁴

5.1. Reservations and succession of States

5.1.1 [5.1] Newly independent States¹⁹⁵

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of guideline 3.1 of the Guide to Practice.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the relevant rules set out in Part 2 (Procedure) of the Guide to Practice apply in respect of that reservation.

4. For the purposes of this Part of the Guide to Practice, “newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible.

5.1.2 [5.2] Uniting or separation of States¹⁹⁶

1. Subject to the provisions of guideline 5.1.3, a successor State which is a party to a treaty as the result of a uniting or separation of States shall be considered as maintaining any reservation to the treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates, unless it expresses its intention not to maintain one or more reservations of the predecessor State at the time of the succession.

2. A successor State which is a party to a treaty as the result of a uniting or separation of States may not formulate a new reservation.

3. When a successor State formed from a uniting or separation of States makes a notification whereby it establishes its status as a party or as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but to which the predecessor State was a contracting State, that State shall be considered as

¹⁹³ For the commentary to this guideline, see sect. C.2 below.

¹⁹⁴ For the commentary to this guideline, see sect. C.2 below.

¹⁹⁵ For the commentary to this guideline, see sect. C.2 below.

¹⁹⁶ For the commentary to this guideline, see sect. C.2 below.

maintaining any reservation to the treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates, unless it expresses a contrary intention when making the notification or formulates a reservation which relates to the same subject matter as that reservation. That successor State may formulate a new reservation to the treaty.

4. A successor State may formulate a reservation in accordance with paragraph 3 only if the reservation is one the formulation of which would not be excluded by the provisions of subparagraph (a), (b) or (c) of guideline 3.1 of the Guide to Practice. The relevant rules set out in Part 2 (Procedure) of the Guide to Practice apply in respect of that reservation.

5.1.3 [5.3] Irrelevance of certain reservations in cases involving a uniting of States¹⁹⁷

When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State, such reservations as may have been formulated by any such State which, at the date of the succession of States, was a contracting State in respect of which the treaty was not in force shall not be maintained.

5.1.4 Establishment of new reservations formulated by a successor State¹⁹⁸

Part 4 of the Guide to Practice applies to new reservations formulated by a successor State in accordance with guideline 5.1.1 or 5.1.2.

5.1.5 [5.4] Maintenance of the territorial scope of reservations formulated by the predecessor State¹⁹⁹

Subject to the provisions of guideline 5.1.6, a reservation considered as being maintained in conformity with guideline 5.1.1, paragraph 1, or guideline 5.1.2, paragraphs 1 or 3, shall retain the territorial scope that it had at the date of the succession of States, unless the successor State expresses a contrary intention.

5.1.6 [5.5] Territorial scope of reservations in cases involving a uniting of States²⁰⁰

1. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of only one of the States forming the successor State becomes applicable to a part of the territory of that State to which it did not apply previously, any reservation considered as being maintained by the successor State shall apply to that territory unless:

(a) The successor State expresses a contrary intention when making the notification extending the territorial scope of the treaty; or

(b) The nature or purpose of the reservation is such that the reservation cannot be extended beyond the territory to which it was applicable at the date of the succession of States.

2. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of two or more of the uniting States becomes applicable to a part of the territory of the successor State to which it did not apply at the date of the succession of States, no reservation shall extend to that territory unless:

¹⁹⁷ For the commentary to this guideline, see sect. C.2 below.

¹⁹⁸ For the commentary to this guideline, see sect. C.2 below.

¹⁹⁹ For the commentary to this guideline, see sect. C.2 below.

²⁰⁰ For the commentary to this guideline, see sect. C.2 below.

(a) An identical reservation has been formulated by each of those States in respect of which the treaty was in force at the date of the succession of States;

(b) The successor State expresses a different intention when making the notification extending the territorial scope of the treaty; or

(c) A contrary intention otherwise becomes apparent from the circumstances surrounding that State's succession to the treaty.

3. A notification purporting to extend the territorial scope of reservations within the meaning of paragraph 2 (b) shall be without effect if such an extension would give rise to the application of contradictory reservations to the same territory.

4. The provisions of the foregoing paragraphs shall apply *mutatis mutandis* to reservations considered as being maintained by a successor State that is a contracting State, following a uniting of States, to a treaty which was not in force for any of the uniting States at the date of the succession of States but to which one or more of those States were contracting States at that date, when the treaty becomes applicable to a part of the territory of the successor State to which it did not apply at the date of the succession of States.

5.1.7 [5.6] Territorial scope of reservations of the successor State in cases of succession involving part of a territory²⁰¹

When, as a result of a succession of States involving part of a territory, a treaty to which the successor State is a party or a contracting State becomes applicable to that territory, any reservations to the treaty formulated previously by that State shall also apply to that territory as from the date of the succession of States unless:

(a) The successor State expresses a contrary intention; or

(b) It appears from the reservation that its scope was limited to the territory of the successor State that was within its borders prior to the date of the succession of States, or to a specific territory.

5.1.8 [5.7] Timing of the effects of non-maintenance by a successor State of a reservation formulated by the predecessor State²⁰²

The non-maintenance, in conformity with guideline 5.1.1 or 5.1.2, by the successor State of a reservation formulated by the predecessor State becomes operative in relation to another contracting State or contracting organization or another State or international organization party to the treaty only when notice of it has been received by that State or international organization.

5.1.9 [5.9] Late reservations formulated by a successor State²⁰³

A reservation shall be considered as late if it is formulated:

(a) By a newly independent State after it has made a notification of succession to the treaty;

(b) By a successor State other than a newly independent State after it has made a notification establishing its status as a party or as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but in respect of which the predecessor State was a contracting State; or

²⁰¹ For the commentary to this guideline, see sect. C.2 below.

²⁰² For the commentary to this guideline, see sect. C.2 below.

²⁰³ For the commentary to this guideline, see sect. C.2 below.

(c) By a successor State other than a newly independent State in respect of a treaty which, following the succession of States, continues in force for that State.

5.2 Objections to reservations and succession of States

5.2.1 [5.10] Maintenance by the successor State of objections formulated by the predecessor State²⁰⁴

Subject to the provisions of guideline 5.2.2, a successor State shall be considered as maintaining any objection formulated by the predecessor State to a reservation formulated by a contracting State or contracting organization or by a State party or international organization party to a treaty unless it expresses a contrary intention at the time of the succession.

5.2.2 [5.11] Irrelevance of certain objections in cases involving a uniting of States²⁰⁵

1. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the State so formed, such objections to a reservation as may have been formulated by any such State which, at the date of the succession of States, was a contracting State in respect of which the treaty was not in force shall not be maintained.

2. When, following a uniting of two or more States, the successor State is a party or a contracting State to a treaty to which it has maintained reservations in conformity with guideline 5.1.1 or 5.1.2, objections to a reservation made by another contracting State or a contracting organization or by a State or an international organization party to the treaty shall not be maintained if the reservation is identical or equivalent to a reservation which the successor State itself has maintained.

5.2.3 [5.12] Maintenance of objections to reservations of the predecessor State²⁰⁶

When a reservation formulated by the predecessor State is considered as being maintained by the successor State in conformity with guideline 5.1.1 or 5.1.2, any objection to that reservation formulated by another contracting State or State party or by a contracting organization or international organization party to the treaty shall be considered as being maintained in respect of the successor State.

5.2.4 [5.13] Reservations of the predecessor State to which no objections have been made²⁰⁷

When a reservation formulated by the predecessor State is considered as being maintained by the successor State in conformity with guideline 5.1.1 or 5.1.2, a contracting State or State party or a contracting organization or international organization party to the treaty that had not objected to the reservation in respect of the predecessor State may not object to it in respect of the successor State, unless:

(a) The time period for formulating an objection has not yet expired at the date of the succession of States and the objection is made within that time period; or

(b) The territorial extension of the treaty radically changes the conditions for the operation of the reservation.

²⁰⁴ For the commentary to this guideline, see sect. C.2 below.

²⁰⁵ For the commentary to this guideline, see sect. C.2 below.

²⁰⁶ For the commentary to this guideline, see sect. C.2 below.

²⁰⁷ For the commentary to this guideline, see sect. C.2 below.

5.2.5 [5.14] Capacity of a successor State to formulate objections to reservations²⁰⁸

1. When making a notification of succession establishing its status as a party or as a contracting State to a treaty, a newly independent State may, in the conditions laid down in the relevant guidelines of the Guide to Practice, object to reservations formulated by a contracting State or State party or by a contracting organization or international organization party to the treaty, even if the predecessor State made no such objection.
2. A successor State other than a newly independent State shall also have the capacity provided for in paragraph 1 when making a notification establishing its status as a party or as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but in respect of which the predecessor State was a contracting State.
3. The capacity referred to in the foregoing paragraphs shall nonetheless not be recognized in the case of treaties falling under guidelines 2.8.2 and 4.1.2.

5.2.6 [5.15] Objections by a successor State other than a newly independent State in respect of which a treaty continues in force²⁰⁹

A successor State other than a newly independent State in respect of which a treaty continues in force following a succession of States may not formulate an objection to a reservation to which the predecessor State had not objected unless the time period for formulating an objection has not yet expired at the date of the succession of States and the objection is made within that time period.

5.3 Acceptances of reservations and succession of States**5.3.1 [5.16 bis] Maintenance by a newly independent State of express acceptances formulated by the predecessor State²¹⁰**

When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty, it shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization unless it expresses a contrary intention within 12 months of the date of the notification of succession.

5.3.2 [5.17] Maintenance by a successor State other than a newly independent State of the express acceptances formulated by the predecessor State²¹¹

1. A successor State, other than a newly independent State, in respect of which a treaty continues in force following a succession of States shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization.
2. When making a notification of succession establishing its status as a contracting State or as a party to a treaty which, on the date of the succession of States, was not in force for the predecessor State but to which the predecessor State was a contracting State, a successor State other than a newly independent State shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting

²⁰⁸ For the commentary to this guideline, see sect. C.2 below.

²⁰⁹ For the commentary to this guideline, see sect. C.2 below.

²¹⁰ For the commentary to this guideline, see sect. C.2 below.

²¹¹ For the commentary to this guideline, see sect. C.2 below.

State or by a contracting organization unless it expresses a contrary intention within 12 months of the date of the notification of succession.

5.3.3 [5.18] Timing of the effects of non-maintenance by a successor State of an express acceptance formulated by the predecessor State²¹²

The non-maintenance, in conformity with guideline 5.3.1 or guideline 5.3.2, paragraph 2, by the successor State of the express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization 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.

5.4 Interpretative declarations and succession of States

5.4.1 [5.19] Interpretative declarations formulated by the predecessor State²¹³

A successor State should, to the extent possible, clarify its position concerning interpretative declarations formulated by the predecessor State. In the absence of any such clarification, a successor State shall be considered as maintaining the interpretative declarations of the predecessor State.

The preceding paragraph is without prejudice to situations in which the successor State has demonstrated, by its conduct, its intention to maintain or to reject an interpretative declaration formulated by the predecessor State.

²¹² For the commentary to this guideline, see sect. C.2 below.

²¹³ For the commentary to this guideline, see sect. C.2 below.