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RESERVATIONS TO TREATIES

**Text and title of the draft guidelines provisionally adopted
by the Drafting Committee on 11, 12, 17, 18, 19, 20, 21, 25 and 27 May 2010**

4. Legal effects of reservations and interpretative declarations

4.1. Establishment of a reservation with regard to another State or organization

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 treaty

1. 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.
2. 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.

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

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 organization

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 reservation

4.2.1 Status of the author of an established reservation

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 treaty

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 treaty

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 relations

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.

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 relates

In so far 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 reservation

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 reservation

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 objection

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.

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

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 effect

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 relations

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 relates

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 twelve 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 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 reservation

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 treaty

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 law

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*)**

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.
