General Assembly

INTERNATIONAL LAW COMMISSION
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RESERVATIONS TO TREATIES

Text of draft guidelines 2.8.1, 2.8.2, 2.8.3, 2.8.4, 2.8.5, 2.8.6, 2.8.7, 2.8.8, 2.8.9, 2.8.10, 2.8.11 and 2.8.12 provisionally adopted by the Drafting Committee on 7, 8, 9, 10, 16 and 22 July 2008

2.8.1 Tacit acceptance of reservations

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 reservations

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 reservation

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 acceptance

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

2.8.5 Procedure for formulating express acceptance

Draft 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 reservation

An express acceptance of a reservation made by a State or an international organization prior to confirmation of the reservation in accordance with draft guideline 2.2.1 does not itself require confirmation.

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

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.

2.8.8 Organ competent to accept a reservation to a constituent instrument

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 instrument

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.

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.

2.8.10 Acceptance of a reservation to a constituent instrument that has not yet entered into force

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 instrument

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

Acceptance of a reservation cannot be withdrawn or amended.