



General Assembly

Distr.
LIMITED

A/CN.4/L.744
29 May 2009

Original: ENGLISH AND
FRENCH

INTERNATIONAL LAW COMMISSION
Sixty-first session
Geneva, 4 May-5 June and 6 July-7 August 2009

RESERVATIONS TO TREATIES

**Text and title of the draft guidelines provisionally adopted by the
Drafting Committee on 5, 6, 18, 19, 27, 28 and 29 May 2009**

2.4.0 Form of interpretative declarations

An interpretative declaration should preferably be made in writing.

2.4.3 bis Communication of interpretative declarations

The communication of a written interpretative declaration should be made, *mutatis mutandis*, in accordance with the procedure established in draft guidelines 2.1.5, 2.1.6 and 2.1.7.

2.9.1 Approval of an interpretative declaration

“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.

2.9.2 Opposition to an interpretative declaration

“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 declaration

“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 an approval, opposition or recharacterization

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 Written form of approval, opposition and recharacterization

An approval, opposition or recharacterization in respect of an interpretative declaration should, whenever possible, be formulated in writing.

2.9.6 Statement of reasons for approval, opposition and recharacterization

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 an approval, opposition or recharacterization

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

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

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

2.9.9 Silence with respect to an interpretative declaration

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 declarations

Guidelines 2.6.1 to 2.8.12 shall apply, *mutatis mutandis*, to reactions of States and international organizations to conditional interpretative declarations.]

3.2 Assessment of the validity of reservations

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

- Contracting States or contracting organizations

- Dispute settlement bodies and
- Treaty monitoring bodies

3.2.1 Competence of the treaty monitoring bodies to assess the validity of reservations

A treaty monitoring body may, for the purpose of discharging the functions entrusted to it, assess the validity 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 validity of reservations

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 validity 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 bodies

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 validity of the reservations that they have formulated.

3.2.4 Bodies competent to assess the validity of reservations in the event of the establishment of a treaty monitoring body

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 validity 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 validity of reservations

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