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(translation)

Statement by Mr. Huang Huikang
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On Agenda Item 81
Report of the 63th Session of the International Law
Commission (Part 2: Reservations to Treaties)

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Mr.Chairman,

The Chinese delegation listened carefully to the introduction on the Guide to Practice on Reservations to Treaties by Professor Alain Pellet, the Special Rapporteur and the statements by other distinguished delegates on it. What makes us surprised is the strong queries by the delegates and legal advisors on the Guide. We are also surprised to witness the arrogant attitude of "take it or bury it" by our Special Rapporteur. I would like to kindly remind the Special Rapporteur that this is the meeting room for Sixth Committee of General Assembly, not the classroom where he teaches his students.

Mr. Chairman,

The Chinese delegation would like to thank the Special Rapporteur, Mr. Alain Pellet, for his introduction on the Guide to Practice on Reservations to Treaties, and commend his endeavors and contributions to this topic and its outcome in the past 18 years. However, frankly speaking, Chinese delegation also has to point out that the Commission's discussion and the final outcome of this topic is just a typical example, which clearly indicates the urgent need to improve the Commission's working method. And the following two numbers could be self-proving, namely, the Commission took 18 years to produce a guidance of hundreds of pages. It will be interesting to do a little survey that how many of

us, the distinguished legal advisors and delegates present, had read through this Guide? And how many of us are intended to read it through carefully in the future? As far as I know, maybe not all of the members of the Commission have read this Guide in depth. As for me myself, I would like to tell you that the truth that I tried to read it from the beginning to the end, but failed to do so, because I found it to be of little help to my work on treaties.

In the case of the topic of Reservations to Treaties, the Special Rapporteur mechanism was also proved to be of great significance to the work of the Commission. The special Rapporteur could properly steer the Commission to produce valuable achievements through discussion on certain topic. He or she may also mislead the Commission to get an outcome, which is time consuming, labor intensive but of little benefits or even being disregarded by Member States. From the discussion on this topic in the Commission, it could be concluded without difficulty that the Guide probably belongs to the latter. Except for the compliment words with courtesy, the true value of the Guide to Practice on Reservations to Treaties has been challenged seriously. As mentioned by several delegates in their previous statements, the Guide may cause more problems than it could solve. My delegation is also confused on the following question. That is, after 20 years' deliberation, why delegates from Member States still have so many questions and critical opinions on the outcome of

this topic presented by the Commission. This seems to be very rare in the Commission's history.

Mr Chairman,

As we all noticed, the most distinctive feature of this Guide is being over-elaborated with trivial details, which makes it to be pedantic and far away from state practices. It tries to provide standard answers, in theory, for all questions encountered or may be encountered in the field of treaty reservation. However, many of those questions are just based on hypothesis, which may never be encountered in the treaty practice of one state, or it is not a difficult question to be settled when encountered. While the Chinese delegation regards this as an accomplishment, it also sees, from another perspective, problems that may arise out of it. In traditional Chinese painting, a technique often used is called “preserving blank space”, which seeks to leave certain parts of the painting blank for a better composition to stimulate the imagination of the viewer and achieve greater aesthetic effect. Likewise, while rules are certainly desirable in international legislation, it is practically impossible to legislate for every imaginable scenario. Moreover, to do so may create a straight jacket. It is therefore particularly important to develop legal principles that can provide practical guidance and leave space for their operation at the same time. Existing regimes of treaty law offer many good principles that very well embody this

balance, such as the principle of autonomy. We note with regret that there is yet room for improvement in the Guide to Practice. Some provisions lack sufficient flexibility and balance. For instance, the approach of positive deduction adopted in guideline 4.5.3 in case the author of an invalid reservation does not raise objection is in contravention to the principle of autonomy.

Furthermore, on the two annexes on “proposal for reservations dialogue” and “proposal for technical assistance and assistance in the settlement of disputes in the field of reservations”, the Chinese delegation believes that reservations as well as their explanation and withdrawal should be left to the states parties themselves as directed by the principle of autonomy of the law of treaties. In practice, all states are capable of addressing issues related to reservations by themselves. Therefore, the necessity and feasibility of the two annexes need to be further studied.

Mr. Chairman,

with the above-mentioned, the Chinese delegation suggests the Six Committee should only take note of the Guide to the practice on reservations to treaties, and need not to take any further action on it.

Thank you, Mr. Chairman.