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**68<sup>TH</sup> SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY**

**Sixth Committee**

**Agenda Item 81**

**Report of the International Law Commission  
on the work of its sixty-third and sixty-fifth sessions**

**Part 2**

**Reservations to Treaties**

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**Statement by  
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*Check against delivery*

Mr. Chairman,

Greece takes this opportunity to pay tribute to Professor Alain Pelet for the high quality of his work within the Commission over the past years in dealing with one of the most complex and sensitive topics of Treaty Law that is reservations to treaties. We also express our gratitude to the International Law Commission for having adopted in 2011 the Guide to Practice, which address a full range of issues relating to contemporary treaty reservations practice and provide useful clarifications and insight analysis on the relevant provisions of the two Vienna Conventions on the Law of Treaties of 1969 and 1986 respectively. In addition, and given the limited availability of pertinent practice, several draft articles of the Guide move in the direction of progressive development of international law, rather than codification, thus filling existing gaps in the Vienna system on reservations, without however detracting from the object and purpose of that system and being fully in line with it.

We are confident that the Guide to Practice will become an important reference for States, International Organizations, scholars and treaty bodies in their daily practice and dealings with the sensitive issue of reservations to treaties.

My delegation has over the past years extensively commented on most of these guidelines during the consideration of the previous ILC reports on this topic. At this stage I will confine myself to some brief comments on a few draft guidelines which are of particular interest to my delegation.

Mr. Chairman,

We welcome the effort made by the Special Rapporteur to decrease the number of the draft articles and to further restructure them in order to meet the concerns expressed by several delegations, including my own, that a less extensive Guide to Practice would better serve its purpose. This is particularly true as regards the guidelines contained in Part 1: Definitions, which have been further streamlined and refined.

On Part 2: Procedure: Greece considers that the present wording of guideline **2.9.9** (silence with respect to an interpretative declaration), and more specifically the deletion of the second paragraph thereof, is a positive improvement and it better reflects the position expressed by many delegations that mere silence to an interpretative declaration cannot be considered as «acquiescence» of that declaration and that the latter has to be ascertained by reference to international law. Any other solution would put a huge administrative burden on States, by placing them under the obligation to react to every interpretative declaration made in order to safeguard their position.

On late reservations, an issue that is registered as progressive development of international law, Greece, while recognizing the Commission's pragmatic approach on this issue and the improvements made in the wording of the relevant guidelines, **2.3** (late formulation of reservations) and **2.3.1** (acceptance of the late formulation of a reservation), wishes however to reiterate its position that such practices should be used only in exceptional cases given the risk to endanger the smooth operation of

treaty relations because of the legal uncertainty that they entail. In this respect, it is important to recall the Commentary to guideline 2.3, which rightly emphasises that the cases involved have almost always been fairly borderline ones.

Likewise, Greece continues to be concerned with guideline 2.3.4 (widening of the scope of a reservation), which allows for the widening of the scope of application of reservations, an issue, which in our view, is conceptually very different from that of the 'late reservations'. We believe that the present Guide to Practice should give greater emphasis to the need for discipline on behalf of States with respect to formulating reservations and to discourage such practices.

With respect to guideline 2.6.13 (Objections formulated late), according to which an objection formulated late does not produce all the legal effects of an objection formulated within the period of twelve months (guideline 2.6.12), we would like to have a clearer idea as to what (if any) these legal effects would be. This is all the more so given the explanations given in the commentary to this guideline that: «*such late objections do not produce any immediate legal effect*» and that «*while an objection formulated late may constitute an element in determining the validity of a reservation, it cannot produce the "normal" effects of an objection of the type provided for in article 20, paragraph 4 (b), and article 21, paragraph 3, of the Vienna Conventions*».

On Part 3: Permissibility of reservations and interpretative declarations. Greece welcomes the improvement and the refinement of the guidelines regarding the competence of Treaty Monitoring Bodies to assess the permissibility of reservations. Likewise, Greece expresses its satisfaction for the deletion of guideline 3.3.3 [3.3.4] (Effect of collective acceptance of an impermissible reservation). In our view lack of objection in respect of an impermissible reservation does not make it legal. This also derives from guideline 3.3.3, according to which acceptance of an impermissible reservation does not have any effect on the impermissibility of that reservation.

Part 4: Legal effects of reservations and interpretative declarations

Mr. Chairman, let me now make some remarks on one of the most contentious issues of treaty reservation practice that is guideline 4.5.3 (reaction to an invalid reservation) of the Guide to Practice. This guideline, the provisions of which as the ILC itself underlines form part of the cautious progressive development of international law, has been broadly debated within the Sixth Commission and my delegation had the opportunity to offer its views on it on many occasions, and in particular at the sixty fifth session of the General Assembly.

It should be recalled that in the previous formulation of this guideline the presumption was that a state formulating an invalid reservation would nevertheless become a party to a treaty without the benefit of the reservation. My delegation had supported that approach as reflecting the practice developed by some states according to which reservations incompatible with the object and purpose of the treaty are "severable", meaning that they are invalid and the reserving state is bound by the said treaty without the benefit of the reservation. The severability principle has also been applied by the human rights monitoring bodies in relation to reservations to human rights

treaties in order to preserve the integrity of those instruments while at the same time allowing the reserving state to be bound by the provisions of the treaty.

Draft guideline 4.5.3 in its current formulation has been modified and the presumption is now based on the intention of the State of the invalid reservation to determine that State's status as a party to the treaty. This is certainly a serious departure from the severability practice developed by States in their treaty relations over the past years.

Furthermore, paragraph 3 of guideline 4.5.3 by stating that the reserving State can express its intention not to be bound by the treaty without the benefit of the reservation, introduces a legal uncertainty as it is not clear when such intention would produce its effects. The same uncertainty is introduced in the new paragraph 4 of this draft guideline to the extent that it allows the reserving state to express its wish not to be bound by the treaty after a treaty monitoring body has assessed the invalidity of a given reservation.

Mr. Chairman,

It is our understanding that the above modifications to draft guideline 4.5.3 have been suggested by the Commission in order to provide a compromise solution given the divergent views of delegations in the Sixth Committee on this on this legally complex and politically sensitive issue. My delegations wishes to be constructive on this matter, however we fail to see how this guideline, which as the ILC itself underlines forms part of the cautious progressive development of international law, will be implemented in the future by those states that consistently apply the practice of severability in their treaty relations. The same concern also applies in relation to human rights treaty monitoring bodies.

Mr. Chairman,

With respect to the draft guideline on a reservation dialogue Greece welcomes this recommendation. The process suggested by the Commission is a most flexible one and might be conducive to better treaty relations and legal certainty to the extent that it could help states to better understand the basis of a reservation and to make an assessment as to its validity. Such a dialogue has been developed in other fora of international cooperation, such as the Council of Europe and the European Union, and has proved to be useful to member states, in particular as regards their understanding of reservations entered by States and International Organizations and formulating reactions thereto.

Mr. Chairman,

Before concluding I would like once more to express our full appreciation and gratitude to Professor Alain Pellet for his valuable contribution to the work of the ILC over the past twenty years.

I thank you Mr. Chairman.

