Islamic Republic of
I R A N
Permanent Mission to the United Nations

Statement by

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Report of the International Law Commission
on the work of its sixty-third and sixty-fifth sessions
Part two: Reservation to treaties

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بسم الله الرحمن الرحيم

Mr. Chairman,

At its Sixty-Third session, the Commission adopted the guidelines and commentaries constituting the "Guide to Practice on Reservations to Treaties", which comprises an introduction, the text of the guidelines with commentaries thereto, as well as an annex on the reservations dialogue. My delegation commends the Commission for adoption of the "Guide", and expresses its appreciation to Mr. Alain Pellet, Special Rapporteur, for his significant contribution to this project.

We welcome the decision of the Commission to recommend to the General Assembly to take note of the Guide to Practice and the mechanism of assistance in relation to reservations. We believe it will ensure the widest dissemination of the Guide to Practice. This should not, however, be interpreted as endorsing each and every part of the Guide as many delegations including this delegation have thus far voiced their concerns and reservations on a number of the Guides or their relevant commentaries.

Mr. Chairman,

As eloquently clarified in the addendum to the Commission's report on the work of its 63rd session (document A/66/10/Add.1, page 34), the Guide to Practice, 'is by no means binding'. Rather, it aims to 'offer the reader a guide to past [...] practice' and 'to direct the

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user towards solutions that are consistent with the framework of the Vienna Conventions of 1969 and 1986, or to the solutions that seem most appropriate for the progressive development of such framework.' However, it is advisable to be vigilant in the area of progressive development as some of the new rules may cause practical problems including by contradicting the already existing rules or going too far beyond long-time State practice.

The institution of 'reservation' to treaties in international law stands to fulfill a key purpose; that is to guarantee maximum level of membership to treaties while maintaining the overall integrity of the treaty in question. In effect, 'reservation' is an effective tool for propagating and enriching the body of international law. The ILC's proposed Guide to Practice on Reservations to Treaties should, therefore, be considered and reviewed in a way that the practical *raison d'ętre* of this important institution is not compromised.

Mr. Chairman,

My delegation took note of the Special Rapportur's proposed mechanism to "engage [all stakeholders] in an informal dialogue concerning the permissibility, scope and meaning of the reservations or objections to reservations formulated by a contracting State or a contracting organization" (A/66/10, page 14) under the enchanting 'reservations dialogue'. We see no harm in encouraging States to engage in such dialogue as long as it remains a voluntary, non-binding consultative exchange of views between and among parties, both existing and potential, to a treaty. As indicated by the Special Rapporteur himself in document A/66/10 (page 15), any 'legal formalism that might make it inflexible' or 'destroy its spontaneity and effectiveness' must be avoided. After all, 'reservations' are made (or in fact prescribed) by the legislative power of each State and as such the executive branch has no, or at most very little, leeway to forego or even modify the reservations.

The designated depositary of each treaty is well placed to play an important role in facilitating reservations consultation among and between States parties. This should not in any way be misinterpreted as entrusting the depositary with a special commitment or granting the depositary a privileged status of a filtering focal point in conducting such consultations.

'Flexibility' is a keyword in evaluating the usefulness of different provisions of the Guide to Practice; likewise, State 'consent' should remain the primary consideration both in assessing the validity of reservations and in determining the effects of objections to reservations. Any 'legal formalism', be it in the form of 'reservations dialogue' or 'observatory on reservations to treaties' or similar 'observations assistance mechanism', which may either dilute this flexibility or undermine that consent would hardly serve the cause of international treaty law. My delegation views the establishment of such mechanisms overly premature that might risk the flexibility element as an intrinsic feature of 'reservations' as well as prejudice to sovereignty of State parties to a treaty choosing to join the treaty with particular reservations.

In the same line, my delegation could not accept an objection by a State party to a treaty to have so-called 'super maximum' effect on a reservation made by another State party. The concept of 'objection' to a reservation should be considered in the light of the established principles of international law, including the principle of sovereign equality of States which also constitutes the core of the consensual framework of the Vienna Conventions and ensues that States are only bound to a treaty once they express their consent and that no State can

bind another State against its will. Objections with 'super maximum' effect have no place in international law. Assuming such an effect for objections as to create binding relationship between the author of a reservation and the objecting State in entirety of the treaty, including the provisions to which the reservation is made, is in fact the imposition of the treaty obligations on a State without its prior consent. Such an effect changes the Vienna regime for reservations to treaties and is not in conformity with the general practice of States. In other words, this is tantamount to undoing one State's reservation by another State's objection and as such it implies giving preferential treatment to the will of the objecting State over the reserving State, which is hardly acceptable.

The same applies to treaties' monitoring bodies; no substantive status should be accorded to such bodies as they are normally composed of individual experts and could not be granted the power to provide an authoritative binding assessment about the permissibility of reservations formulated by a sovereign State party. After all, a precedent set by certain local or regional monitoring bodies could not be simply replicated to be applied at the international level.

Mr. Chairman,

Turning to interpretative declarations, I would like to emphasize that in some cases these declarations facilitate applicant States' membership to international treaties. It is important that we take into account usefulness of such declarations in providing practical guides to apply relevant provisions of the 1969 Vienna Convention. In our view introducing detailed guidelines on interpretative declarations would create problems of their practical applicability and may affect their usefulness.

On the question of which State or international organization is entitled to formulate objection, my delegation believes that reservation and objection thereto make bilateral legal relations between a reserving State and an objecting State, in respect of their treaty relationship. Accordingly, only parties to a treaty are entitled to formulate objection to reservations made to that treaty. This argument is based also on the principle that there should be a balance between rights and obligations of the parties to a treaty. Non-parties to a treaty do not deem to be entitled to make objections simply because they do not have obligations under that treaty either.

I thank you, Mr. Chairman.