STATEMENT BY
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Part 2

Reservations to Treaties

Mr. Chairman,

1. Let me first of all congratulate the Commission and former Special Rapporteur Pellet with the Guide to Practice on Reservations to Treaties. *Monsieur le professeur, vous avez achevé un travaille impressionnant, je vous en félicite. A travers les années de vos études au seins de la Commission du Droit Internationalnous avons beaucoup appris concernant le droit des réserves. Ce guide est sans doute un magnum opus, c'est un travaille bien fait, même si – il faut le dire – nous ne partageons pas forcementtous vos avis.*
2. The Netherlandssupported the initial intention of the Commission, considering that there was a need for a practical approach to reservations. This should bear in mind that the primary addressees of the guidelines would be government lawyers and officials of international organizations dealing with reservations in their daily work.The practical utility to these categories of users should be the yardstick with which to measure the relevance of the Guide.

The starting point should be the relevant provisions of the Vienna Convention, and the flexibility of that system should be reflected. As we did in previous years and being fully aware that we are stating an obvious point, we stress that the Guide is no more than just that. This should particularly be borne in mind in cases were the Guide contains, as it does, elements which are not based on practice. It is quite clear that the Guide may, or perhaps even will, form a starting point for the establishment of new state practice and perhaps eventually for international customary law.

3. As I stated the year before last, the systematic approach of special rapporteur Pellet has provided us with a wealth of insight and it has crystallized a number of contemporary issues in the reservations debate. In particular, I wish to express our appreciation for the clarity of the guidelines on the periodic review of reservations (2.5.3), the partial withdrawal of reservations (2.5.10) and the recharacterization of interpretative declarations (2.9.3).Another important step is the way in which the guidelines sketch how to determine and where to find the 'object and purpose of a treaty', this elusive concept in the law of treaties that is *sous entendu*, but rather imprecise at times (3.1.5; 3.1.5.1).
4. Before addressing theoretical issues raised by this guide to practice before us, I wish to reiterate our continued disagreement with the content of

guideline 1.1.3, and agree with what has been said on this issue by the delegations of New Zealand and the United Kingdom.

5. One of the main problems addressed by the ILC was, whether the invalidity of a reservation would mean that the author of this reservation would be bound to the treaty without the benefit of the reservation or would not be bound by the treaty at all. We welcome the approach chosen in guideline 4.5.3, but we would like to point out an apparent oversight in the third paragraph of this guideline, where the words ‘at any time’ may cause confusion as it might mean that the author of a reservation could change its position as a party after the expression of its consent to be bound.

6. Regretfully, a guideline suggesting the consideration of the desirability of formulating specific and precise provisions on reservations during the negotiations of a new instrument, is absent. We think this would be a logical addition within the spirit of these guidelines. Also, these guidelines would have been a fine location to underline the role of the depository as the guardian of the integrity of a treaty. We note that the depository is strangely absent in these rules.

7. An issue that continues to be a source of concern to us relates to guideline 2.3.1 (and related 4.3.2) on the late formulation of reservations. We are acquainted with the practice that reservations communicated to the

depositary some days, or even weeks after the expression of the consent to be bound are usually consideredvalid, as the lateness is supposedly due toadministrative oversight (which may be avery liberal interpretation of the facts). We strongly disagree with the view that a late reservation be deemed accepted unless one state party objects to it. There is no practice supporting this, and this guideline would be a development of law, not necessarily progressive. For the Netherlands a reservation formulated in contravention of articles 23.2or 2.1.d VCLT cannot be considered accepted, even if my government maynot object to it.

8. Regarding the instrument of interpretative declarationswe commend the Commission for its efforts to clarify this notion, particularly bydrawing up guidelines that make it possible to distinguish between interpretative declarations proper and disguised reservations. The question whether an interpretative declaration is in fact a reservation is one thatgovernment lawyers face regularly and are called upon to assess.

9. These effortshowever somewhat overshoot their commendable purpose, risking to compromise the practical relevance of the guidelines, by introducing guidelines 2.9.1 and 2.92 on the approval of, or opposition to interpretative declarations. Even though these guidelines contain only definitions, we find that merely suggesting the *possibility* of approval of or

opposition to interpretative declarations would lessen the difference between reservations and interpretative declarations. In our view it is far from common practice that States partiesapprove or oppose interpretative declarations. Presumptions regarding the silence of States with regard to interpretative declarations or to the conduct of States on the basis of these declarations belong to other parts of international law and should be well left alone in a Guide to Reservations' Practice.

Mr. Chairman,

10. I would like to comment on two proposals made by the ILC.
11. We appreciate the Commission's attention to thereservations' dialogue, as it has developed at regional level in Europe, and for its explanation of the dialogue as a process to facilitate better understanding of reservations and their impact. We regard the dialogue as a very useful tool, benefitting from the flexibility of diplomatic discussions, and indeedit proves to be effective in down-sizing far-reaching reservations, or in ensuring their withdrawal.
12. However,we consider ill-advised the proposal to establish within the 6th Committee of the General Assembly an Observatory on Reservations. We do not believe that initiatives inspired by the ones currently existing at regional

level within European regional organizations - which are in fact the only ones known to us – are suitable for transposition to international (UN) level.The effectiveness of the two existing reservations dialogues is largely dependent upon the active participation of a limited group of States which share a unity of purpose and determination, operating in an informal settingand guided byconfidentiality and mutual respect. We do not believe that a political forum such as the 6th Committee provides the required setting for the dialogue to function effectively and we therefore do not see the merit of formalising the reservations dialogue at that level. This, we are not able to support the recommendationin part II of the ILC resolution in the Annex to the Guide to Practice on Reservations (p.32-33 of A/66/10/Add.1).

13. The second proposal of the Commission, based on the assumption that there may be a reason to consider "flexible dispute settlement on reservations"appears somewhat strange and unrealistic. It is hard to see how this suggestion relates to the essence of contractual relations. There is no obligation to accept reservations, even if the Vienna Convention seems to suggest acceptance, and the onus is on the reserving State to ensure that its reservation will be acceptable to other States. Consequently, there is no need for a mechanism to settle differences of view, as this is all about choices of individual States with respect to establishing treaty relations. Such differences

of view may translate in States not accepting a reservation – that in itself does not constitute a dispute.

Thank you, Mr. Chairman