STATEMENT

On behalf of the Nordic Countries

by

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in the Sixth Committee of the General Assembly

On the Report of the ILC

Part 2

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- CHECK AGAINST DELIVERY -

Reservations to treaties

Mr Chairman,

I have the honour to speak on behalf of the five Nordic countries Denmark, Finland, Iceland, Norway and my own country Sweden, on the outstanding question from the 2011 report (chapter IV of A/66/10 and Add.1) of the International Law Commission, reservations to treaties.

We would, once again, like to commend the ILC and its Special Rapporteur, Mr. Alain Pellet, for the comprehensive set of draft Guidelines of the Guide to Practice on Reservations to Treaties, which will add clarity and consistency to the practical implementation of the Law of Treaties.

An issue to which the Nordic countries attach special importance and on which we have commented several times during the work of the Commission on this topic, is the question of reservations that run counter to the object and purpose of a treaty.

It is of fundamental importance that all States that become parties to a treaty should, at the very least, commit themselves to the object and purpose of the treaty. This is an obligation with regard to the other States parties, but it is also essential in order that globally agreed norms are not undermined by far reaching reservations.

Especially in the field of human rights, reservations running counter to the object and purpose of the convention risk undermining progress made in the global standard setting. The Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child are among those treaties to which States have made reservations that in our opinion are incompatible with the object and purpose of the treaties. Human rights is, however, not the only area where we have seen countries making reservations contrary to the object and purpose of a treaty. Such reservations should in no area be accepted as valid.

A growing number of States have developed the practice of severing invalid reservations, which are reservations that are incompatible with the object and purpose of the treaty. Such practice accords well with Article 19 of the Vienna Convention.

The practice of severing is an interpretation that has also been developed by UN treaty bodies, in particular in the field of human rights. Let me refer, in this regard, to General Comment No 24 of the Human Rights Committee, which supervises the International Covenant on Civil and Political Rights. The Committee, in its general comment, highlights two fundamental elements: that a human rights treaty body has the competence to address the permissibility of reservations and that the usual consequence of an impermissible reservation will be its severability, which means that the State in question is considered to be bound by the treaty without the benefit of its reservation.

The Nordic countries, therefore, welcome the clear and unequivocal statement in draft guideline 4.5.1 that a reservation that does not meet the conditions of formal validity and permissibility set out in Parts 2 and 3 of the Guide to Practice is null and void, and therefore devoid of any legal effect. We believe this to be grounded in state practice and to be in line with the logic of the Vienna regime.

We also agree with guideline 4.5.2 that the nullity of an invalid reservation does not depend on the objection or the acceptance by a contracting State, but that, nevertheless, a State which considers that a reservation is invalid should formulate a reasoned objection as soon as possible.

Where we do not, however, necessarily agree with the draft Guide is with regard to guideline 4.5.3, where the presumption is based on the intention of the author of an invalid reservation. This guideline also suggests that a State which has made an invalid reservation may express at any time its intention not to be bound by the treaty without the benefit of the reservation, and that such intention may also be expressed if a treaty body concludes that a reservation is invalid.

Draft guideline 4.5.3 is neither a codification of existing State practice nor a desirable development of it. Adherence by States to treaties must be seen as commitments to

common values and their adherence to these treaties should not be conditional on them benefitting from reservations that are incompatible with their object and purpose.

A State should have the right to express its intention not to be bound by a treaty without the benefit of a reservation that is compatible with the object and purpose of the treaty. It should, however, not enjoy such a right in the case of an invalid reservation.

We should remember that draft guideline 4.5.3 does not refer to reservations in general, but merely to reservations that are incompatible with the object and purpose of the treaty. It must be our common endeavour that treaties are not undermined by reservations. The adherence by States to certain treaties may be an essential element in the broader cooperation between States. That goes not least for human rights treaties. It is, of course, also essential that persons under the jurisdiction of a State can rely on the treaty obligations of the State concerned. Uncertainty should not be created as to whether a States party is bound by a treaty or not.

Mr Chairman,

The Nordic countries welcome the draft conclusions on a reservations dialogue. An enhanced role in such a dialogue in recent years by the European Union, the Council of Europe and of treaty bodies has had the effect of highlighting the provisions of Article 19 of the Vienna Convention on the Law of Treaties. A number of States have as an effect of such a dialogue clarified, narrowed down or withdrawn their reservations. A most welcome evolution.

Thank you.