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On the Work of its 63rd and 65th Sessions
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Reservations to Treaties

Reservations to treaties

Mr. Chairman, once again, I would like to thank the Chairman of the Commission, Mr. Bernd Niehaus, for his introduction of the Commission's report and for the Commission's completion in 2011 of the Guide to Practice on Reservations to Treaties and commentaries thereto.

Particular gratitude is due to Professor Pellet who devoted countless hours and considerable expertise to this project; he is commended for bringing this work to a conclusion after so many years. The Guide provides helpful and detailed pointers for the practice related to treaty reservations and can be a valuable reference for practitioners. We also find Professor Pellet's introduction to the Guide to be particularly helpful in detailing the Guide's intended purpose and relationship to law. In this connection, we note the Commission's longstanding consensus that the Guide is not intended to replace or amend the Vienna Conventions. The Guide is not a legally binding text and does not authoritatively interpret the Vienna Convention. Indeed, some passages are simply recommendations for good practice, which is consistent with the Guide's overarching purpose of providing practical solutions for the sometimes complicated questions that arise in this area.

We also note that though the Guide at times reflects obligations that are otherwise established via treaty or custom as law, it does not always reflect consistent state practice or settled consensus on certain important questions, as we have indicated in our prior statements on this topic. For example, state practice on the consequences of an invalid reservation remains quite varied and, as a result, section 4.5.3 – one of the more controversial elements of the Guide – in particular, should not be understood to reflect existing law. Moreover, the approach articulated in that section should not be regarded as a desirable rule, since it cannot be reconciled with the fundamental principle of treaty law that a State should only be bound to the extent it expressly

accepts a treaty obligation. If a State objects to another State's reservation as invalid, the objecting State can decide to either accept treaty relations notwithstanding its objection, or it can decide not to accept treaty relations. The reserving State, however, cannot be bound without its consent to a treaty without the benefit of its reservation.

The Commission has recommended the establishment of a "reservations dialogue," and that the General Assembly consider establishing an "observatory" on treaty reservations within the Sixth Committee, as well as a "reservations assistance mechanism."

The United States supports a robust "reservations dialogue" and welcomes the useful practices outlined in the Commission's recommendation, which can help encourage clarity about the meaning and intent behind reservations and objections thereto. We note in particular that the reservations dialogue is not a singular or rigid process, but rather a set of basic recommended practices and principles that can improve reservations practice.

The "observatory" on treaty reservations is an interesting proposal. However, we would need to reflect further on any proposed details before we express a view as to whether it is appropriate to establish such a body within the Sixth Committee.

With regard to the "reservations assistance mechanism," the United States is following this proposal with interest. In general, we question whether an independent mechanism, consisting of a limited number of experts that would meet to consider problems related to reservations, is appropriate to inject into a process that fundamentally is to take place between and among States. Further, we are concerned about any implication that the proposals resulting from the mechanism could be seen as compulsory on the States requesting assistance.

Thank you, Mr. Chairman.