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REPRESENTATIVE OF JAPAN
ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-THIRD AND SIXTY-FIFTH SESSIONS
SIXTH COMMITTEE
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Reservation to treaties

General Comments

Thank you, Mr. Chairman.

The Government of Japan wishes to express its sincere appreciation to the Special Rapporteur, Professor Alain Pellet, for his invaluable work on the topic of “reservations to treaties”. We are aware that Professor Pellet has dedicated his efforts to this topic over a long period of time, ever since his appointment by the International Law Commission as the Special Rapporteur on the topic in 1994. Japan congratulates Professor Pellet on having completed a full set of the Draft Guidelines during the sixty-third session of the Commission in 2011.The VCLT has left open a number of uncertainties regarding reservations and these open questions have had practical implications. Given the complexity of the subject, this Guide to Practice based on in-depth study over two decades is particularly welcome. We have undertaken a thorough analysis of the Draft Gui

Practice at times goes beyond the reflection of State practice. Some clarification on the status of the “Guide to Practice” is therefore called for. For reasons of practicality, simplification may be desirable.

Interpretative declarations have been utilised on the assumption that any provision of an international treaty is subject to certain interpretations. As interpretative declarations, unlike reservations, do not have any legal effect, subjecting interpretative declarations to the test of permissibility is rare in State practice and appears to constitute a process of legislation rather than of codification. A question arises in relation to interpretative declarations when a de

2. Guidelines 2.1.3, paragraph 2 (d), and 2.5.4, paragraph 2 (c)

The guidelines stipulate that when heads of permanent missions to an international organization formulate or withdraw a reservation relating to a treaty between the accrediting States and that organization, said heads of permanent missions fall under the definition of persons who are considered as representing their States without having to produce full powers. In State practice, heads of permanent missions to the United Nations have signed letters relating to reservations to those treaties drafted in the United Nations the depositary

intended to regulate the legal effect of the provision or provisions to which the reservation or objection is made, with regard to the relation between the reserving State and other States Parties to the treaty, it is questionable to include the objections formulated by non-party States to the treaty in question under the concept of objections to reservations. As States Parties to a treaty are under the obligation to implement the rights and obligations under said treaty, a State Party can be directly affected by a reservation formulated by another State Party, which is quite different from a situation, because non-party States are not directly affected by the said reservation. From that point of view, it is questionable to treat both objections formulated by States Parties and views expressed by non-party States under the same concept of "objections to reservations". Even if these two are treated under the same concept of "objections to reservations", as guideline 2.6.3, paragraph (ii), explicitly stipulates, a view of a non-party State regarding a reservation "does not produce any legal effect", as long as that State is not a party to the treaty to which the reservation was made, and thus it carries a legal weight quite different from observations formulated by States Parties. Although the commentary to this guideline explains this aspect to some extent, the explanation is not sufficient (to establish the validity of this view of "objections to reservations"). The same problems arise with regard to guidelines 2.6.12 and 2.8.3.

5. Guideline 2.9

In light of State practice concerning interpretative declarations, cases in which a State has approved an interpretative declaration formulated by another State are rare. In mn112.0(s)]TJ ET Q q BT 0 0 0 rg

object and purpose of the Convention", and that Japan, therefore, "objects to the aforementioned reservation" made by the State concerned. It appears that, as the above-mentioned two cases evidence, States formulate objections to an interpretative declaration when they consider that the interpretative declaration constitutes a de facto reservation and is thus not acceptable to the objecting State. The practice of Japan in the above-cited two cases is consistent with guidelines 2.9.3 to 2.9.7, and thus can be regarded as supporting those guidelines.

6. Guideline 2.9.9

In most cases, silence in response to an interpretative declaration merely denotes lack of relevance to the affairs of the non-responding State, rather than positive approval or negative opposition. Furthermore, States which do not react to an interpretative declaration usually do not explain the reasons for their decision not to respond. Thus, it is extremely difficult to determine whether a State has no reaction to an interpretative declaration as a result of the State's judgment that the interpretative declaration is not relevant to its interests, or as a result of its intentional choice to remain silent despite some concerns about the declaration. We therefore consider that, in principle, silence in response to an interpretative declaration should not be construed as approval of or acquiescence in the declaration. In light of the above consideration, the current text of guideline 2.9.9 and the commentary thereto duly reflect our concerns.

7. Furthermore, although guideline 3.2.1, paragraph 2, clarifies the limit of the legal effects of the assessment by treaty monitoring bodies by stipulating that "the assessment made by such a body in the exercise of this competence has no greater legal effect than that of the act which contains it", it must be pointed out that the conclusions formulated by treaty monitoring bodies often have been construed as an authoritative assessment of the provisions of the treaty in question, even when those conclusions are not legally well founded, and thus have caused an unexpected or undesirable situation for a State Party to the treaty in question. The current text of this guideline is not sufficient to ease such serious concerns of States Parties.

8. Guidelines 3.2.2-3.2.4

If the treaty in question explicitly confers its treaty monitoring body with the power to assess the permissibility of reservations, the principles enshrined in

determination as to which provision has a sufficient link with the provision or provisions to which the reservation relates. On that basis, Japan doubts whether this guideline should be included in the Draft Guidelines.

11. Guideline 4.5

In most cases, a State aims to regulate a treaty relation with another State through the regime