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Agenda Item 156

The Report of the International Law Commission:

Reservations to Treaties

Reservations to Treaties

Mr. Chairman, today we will briefly address the topic of reservations to treaties, a subject covered in Chapter VI of the Commission's report.

As we noted last week, we appreciate the way in which this work continues to progress in generally useful ways under the leadership of Professor Pellet, the Special Rapporteur. We find great merit in the Commission's concept of a Guide to Practice, rather than a more formal and rigid document. We also believe that the Commission's work in this area properly recognizes and builds upon the strengths of the universal regime of reservations under the Vienna Convention on the Law of Treaties.

Accordingly, we welcome the Commission's adoption on first reading of 18 draft guidelines and commentaries designed to constitute the first chapter of its proposed Guide to Practice. The restructuring of the first chapter into six separate sections should facilitate the work of foreign ministry treaty lawyers in analyzing and evaluating reservations, declarations, and interpretative declarations.

It is interesting that in its presentation, the proposed Guide to Practice is different in its approach from the three Vienna Conventions dealing with the law of treaties. The rules contained in those conventions' articles are what are important. The ILC's commentary may throw light on the meaning of particular Vienna Convention articles, but States seldom, if ever, look at that commentary before citing the Convention rule. With the Commission's guidelines, the contrary may be true. We suspect that States will be more likely to make use of the commentary than the guidelines themselves.

Professor Pellet and his colleagues on the Commission are to be congratulated for having marshaled an impressive

array of published materials together with additional examples of state practice furnished by 22 governments. I am pleased that the United States was able to contribute to this effort. As a result, governments have a comprehensive view of state practice in respect of reservations for the first time since the drafting more than thirty years ago of the Vienna Convention on the Law of Treaties between States. This overview should be a valuable resource for States when they are drafting treaty provisions relating to reservations, declarations, and interpretative declarations; when considering the possibility of making reservations themselves; or when examining whether or not to respond to reservations or interpretative declarations made by other States.

The definitions that establish separate categories of statements that may be made by a State in respect of a treaty have the potential to shape State practice in the future if States see the guidelines as authoritative. This could lead the way to better analysis of the alternatives other than reservations by which a State may express its attitude to a treaty. The choice of a specific alternative described in the guidelines may persuade another State that it need not respond to a particular statement communicated to it by a bilateral treaty partner or circulated to it by the depositary of a multilateral treaty.

In this connection, Mr. Chairman, let me note that the United States has a practice of incorporating understandings in its instruments of ratification. In the practice of the United States an "understanding" is an interpretive statement for the purpose of clarifying or elaborating, rather than changing, the provisions of an agreement. Under the terms of Draft Guideline 1.4.4, which deals with general policy statements, it would appear that understandings by the United States may fall outside the scope of the Guide to Practice. This is so because they do not purport to produce a legal effect on the treaty. Nevertheless, the commentary on the guideline may not be entirely clear. It may be well for this part of the Commentary to be considered further when the Commission turns to its second reading.

Mr. Chairman, I would like to thank the Commission for its willingness to include in Guideline 1.5 a discussion of the applicability of unilateral statements, including reservations, to bilateral treaties. As the

commentary indicates, my Government has the most fully developed practice in this area, but other States also make interpretative declarations in respect of bilateral treaties. We believe that it is useful to include a provision on the subject within the Draft Guidelines.

Finally, Mr. Chairman, my Delegation is pleased to note that, as indicated in paragraph 642 of its report, the Commission plans to take up the Special Rapporteur's sixth report (Effects of reservations and interpretative declarations) at its fifty-third session.

We look forward to completion of the Commission's useful work on this important topic.

Thank you, Mr. Chairman.