



THE REPUBLIC OF KOREA

PERMANENT MISSION TO THE UNITED NATIONS

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Thank you, Mr. Chairman,

My delegation recalls that this topic ‘Reservations to treaties’ was included in the ILC’s programme of work in 1993 and was completed two years ago, in 2011. My delegation expresses its sincere appreciation to the ILC and to Mr. Alain Pellet Special Rapporteur of this topic. “Reservations to treaties,” is one of the most important parts of the law of treaties: reservation is a tool to keep a “balance between the objectives of safeguarding the integrity of multilateral treaties and securing the widest possible participation therein” (Guide to Practice, Annex).

My delegation highly values this important work and its concrete results considering several aspects follows: first, over 40 years have passed since the ‘Vienna Convention on the Law of Treaties’ was adopted and a lot of State’s practice concerning reservations to treaties has accumulated.; secondly, the provisions on reservations of the Vienna Convention have remained unclear so that States have faced practical difficulties due to this uncertainty. Consequently the ILC’s work elucidates the meaning of relevant provisions on reservations and also provides good guidance for the practitioners. I would like to make some comments on the final text of the Guide to Practice on Reservations to Treaties and Recommendation on mechanisms of assistance in relation to reservations to treaties which were adopted at the 63th session of the ILC in 2011.

In regards to the Guide to Practice on Reservations to Treaties, my delegation welcomes the adoption of its final text.' This guide would provide a wide range of information for States officials who confront difficulties during ordinary works related to treaties, such as those associated with formulating and interpreting reservations, interpretative declarations and raising objections to reservations. States initially expected the final result on this topic would be a compact and concise guideline for daily practical use. However, in fact, the Guide to Practice on Reservations to Treaties and its commentaries contain very detailed and voluminous material.

Regarding the contents of the Guide, it is true that the assessment of the validity of reservations to treaties has raised many difficulties in dealing with treaty issues. In this sense, my delegation considers that the Guide facilitates this assessment by specifying conditions for formal validity and permissibility of reservations. However, I would like to recall in terms of 3.2 section of the Guide that the primary entity entitled to assess reservations to treaties is a State who made a reservation. Therefore, explicit or implied consent of a reserving State is required for other entities to get involved in the assessment of the validity of its reservations. In this sense, treaty-monitoring bodies would not be able to evaluate this validity without any clearly conferred mandate to do so.

Turning to reservations dialogue presented in the Annex to the Guide, my delegation is of the view that this dialogue mechanism is interesting but is purely a reflection of the progressive development of international law. My delegation considers that in principle, exchange of information and opinions on reservations with other States may be a good method to ensure the integrity of multilateral treaties. It is because this exchange could encourage States to modify or withdraw their reservations, which become unnecessary over time. However, this act of exchange should not be used as pressure on States by hindering them from exercising their valid right to make reservations under a treaty. In this regard, my delegation considers that more discussions are needed as to whether reservations dialogue is to be institutionalized and what specific role this dialogue would play.

Lastly, concerning the Recommendation on mechanisms of assistance, my delegation views that the mechanisms of assistance in relation to reservations to treaties can be regarded as a method to contribute to a new development of a law of treaties. It is indispensable for States to continue to carefully discuss the establishment of these mechanisms of assistance composed of experts working in their personal capacity. Given that reservations to treaties concern relations among States parties to a specific treaty, the interference of such mechanisms of individuals in these relations could modify the core characteristic of the law of treaties. In this respect, it is needed to clarify a possible form of mechanisms of assistance and their functions and limits. The ILC

indicated in the Annex (iii) to the Recommendation that these mechanisms could present proposals to resolve differences among views on reservations to treaties. This provision could be interpreted as implying that mechanisms of assistance can play the role of a dispute settlement body. My delegation would like to express concern for such an interpretation. If mechanisms of assistance are to be established, their main function would be limited to offering technical assistance to States in formulating reservations or objections to other reservations, as the Annex (iv) to the Recommendation states. Such assistance can be provided at the request of contracting parties to a treaty.

In concluding, again my delegation would like to express a sincere appreciation for the ILC and Mr. Alain Pellet for such excellent final work on 'Reservations to treaties'.

Thank you, Mr. Chairman.