

One Dag Hammarskjold Plaza
(885 Second Avenue)
New York, NY 10017

Tel: +1 (212) 745 9200
Fax: +1 (212) 745 9316

Mr Chairman,

Introduction

Tribute to Alain Pellet

Mr Chairman,

The UK would like to take this opportunity to pay tribute to Professor Pellet

I now turn to the Guidelines themselves.

7KH 8.¶V SRVLWLRQ KDV DOZD\V EHHQ WKDW LQ DF
Advisory Opinion on Reservations to the Genocide Convention, if a State has made an invalid reservation, it has not validly expressed its consent to be bound. And so treaty relations cannot arise. We consider this to be the *lex lata*.

As well as in our comments to the Commission, we have set out our view in GHWDLO LQ RXU REVHUYDWLRQV RQ WKH +XPDQ 5LJ
Comment 24. There, the UK made the obvious point that treaty relations are based on consent and the only result of an invalid reservation is that treaty relations will not arise between the reserving and objecting States.

In 2009, the Commission suggested that there should be a presumption that a State entering an invalid reservation would nevertheless become a party to a treaty without the benefit of its invalid reservations. That presumption could, however, be rebutted on the basis of non-exhaustive criteria.

Although wH UHVS RQG HG SRVLWLYHO\ WR WKH VH QWLPHQW
thinking, we considered the listed criteria vague, and, as such, voiced the opinion that the guideline as then drafted would lead to a lack of legal certainty.

The current guideline 4.5.3 is much closer to the suggested draft we put forward in our written comments in 2010. With regards paragraph 1, we would agree that whether the reserving State wishes to be bound without the benefit of its reservation or considers it is not bound by the treaty at all if its reservation is deemed invalid depends on the intention of the reserving State. Paragraph 2 does not, in our view, reflect the *lex lata*, and does not purport to do so. There is a real question ± dealt with in the commentary ± as to whether paragraph 2 would have been better setting out the reverse presumption. However, we appreciate that a choice had to be made, and that the Commission has put forward its proposals in guideline 4.5.3 for future practice in an effort to strike a reasonable balance.

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D 6WDWH FDQ VWDWH ³DW DQ\ WLPH´ WKDW LW GRHV Q
its reservations are considered invalid. This would enable a reserving State to
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Mr Chairman,

We would like to end our statement by thanking, once again, Professor Pellet and the Commission for producing such a comprehensive and thoroughly researched piece of work. Like the 1969 Vienna Convention on the Law of Treaties, we are confident it will stand the test of time, and that the work will prove to be the definitive guide to reservations for decades to come.

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