

Document:-
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Summary record of the 2919th meeting

Topic:
Reservations to treaties

Extract from the Yearbook of the International Law Commission:-
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a simple objection—i.e., without also making the declaration under article 20, paragraph 4 (b), of the Vienna Conventions, which made it possible to prevent the treaty from entering into force in the relations between the reserving State and the objecting State—wanted to widen its scope. He had already said what he thought about that procedure when he had introduced draft guideline 2.6.13. Just as the widening of the scope of a reservation, which draft guideline 2.3.5 addressed, must be regarded as a late formulation of a new reservation, the widening of the scope of an objection must be taken to be a new objection which not only did not produce effects if it was formulated after the period of time stipulated in article 20, paragraph 5, of the Vienna Conventions but also could not be formulated after the initial objection made within that time period, even if the time period had not yet expired. That was tantamount to repudiating acceptance of the entry into force of the treaty between the two States concerned in the terms resulting from the interplay of reservation and objection, and it was out of the question, both for reasons of good faith and because the reserving State would not have the chance to take a position, and thus the objecting State would impose its will, although it had already made it known that it was in agreement with the entry into force of the treaty in the relations between the two States. That was the reason for the rather radical drafting of the draft guideline contained in paragraph 180 of the eleventh report.

35. Admittedly, the draft guidelines responded more to a logical and even mathematical necessity, as one member of the Commission had observed, although their potential practical utility could not be completely ruled out. He welcomed the Commission's clear instructions to the Drafting Committee and hoped that all the draft guidelines would be referred to it. He thanked the members of the Commission for their positive response to most of his proposals and said that he was convinced by the arguments put forward by nearly all those who had proposed changes to two of the draft guidelines.

Organization of the work of the session (*continued*)*

[Agenda item 1]

36. Mr. VARGAS CARREÑO said that the Planning Group, which he would chair as first Vice-Chairperson and of which Mr. Petrič had been appointed Rapporteur, would be composed of the following members of the Commission: Mr. Al-Marri, Mr. Caflisch, Mr. Comissário Afonso, Ms. Escameia, Mr. Fomba, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Niehaus, Mr. Nolte, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue and Mr. Yamada.

37. Mr. PELLET said that he would also like to join the Planning Group.

38. Mr. VARGAS CARREÑO said that Mr. Pellet's presence in the Planning Group would be most welcome.

The meeting rose at 12.30 p.m.

2919th MEETING

Tuesday, 15 May 2007, at 10.05 a.m.

Chairperson: Mr. Ian BROWNLIE

Present: Mr. Al-Marri, Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.

Reservations to treaties (*continued*) (A/CN.4/577 and Add.1–2, sect. C, A/CN.4/584, A/CN.4/586, A/CN.4/L.705)

[Agenda item 4]

ELEVENTH REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. Mr. PELLET (Special Rapporteur), summing up the debate on draft guidelines 2.6.7 to 2.6.15, on the procedure for the formulation of objections, contained in paragraphs 87 to 144 of his eleventh report,¹⁰⁰ said that the discussion on the draft guidelines had been calm, disciplined, serious and conclusive. As Special Rapporteur, he had been gratified to note that there had been a ready consensus that the draft guidelines should be referred to the Drafting Committee. All too often in the past, the Commission's discussions had strayed from the point and the Drafting Committee, deprived of clear guidance, had been forced to depart from its role and tackle questions of principle. It was clear from the current debate, by contrast, that most of the draft guidelines had, by and large, given rise to few difficulties. The exceptions were draft guidelines 2.6.14 and 2.6.15, which clearly merited closer consideration. An important problem—albeit one that was more or less resolved—also arose in connection with draft guideline 2.6.12 (Non-requirement of confirmation of an objection made prior to the expression of consent to be bound by a treaty). He had, on the whole, been convinced by the criticisms that had been put forward.

2. To begin with the draft guidelines that had presented little or no difficulty, he noted that few members of the Commission had commented on draft guideline 2.6.7 (Written form), but that of those who had, most had approved. They were right to do so, because it simply reflected article 23, paragraph 1, of the 1969 and 1986 Vienna Conventions. Much the same could be said of draft guideline 2.6.8 (Expression of intention to oppose the entry into force of the treaty), although Mr. Fomba had wondered whether it might be appropriate to introduce a reference to a time limit. Such a reference was, however, probably unnecessary, because it appeared in other draft guidelines. Mr. Wisnumurti had asked whether, notwithstanding its reflection of article 20, paragraph 4 (b), of the

* Resumed from the 2915th meeting.

¹⁰⁰ Reproduced in *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/574.

Vienna Conventions, it was logical for the draft guideline to refer both to the “making” and to the “formulating” of an objection to a reservation. While that comment was perhaps justified, in which case the verb “make” was preferable; there was a precedent in the Vienna Conventions. Some words of explanation might be inserted in the commentary.

3. Everyone had been satisfied with draft guideline 2.6.9 (Procedure for the formulation of objections), except for Ms. Escarameia, who had pointed out that the situation of reservations was not identical to that of objections, particularly because no time limit was established. It seemed, however, that she could accept the draft guideline as currently worded. A reference might be inserted in the commentary, pointing out that the phrase “*mutatis mutandis*” took account of the concerns expressed by Ms. Escarameia.

4. Rather to his surprise, given that it reflected no rule of positive law and took the form of a recommendation, draft guideline 2.6.10 (Statement of reasons) had been the subject of mostly favourable comment, from which one might perhaps conclude that the Commission, in its current composition, was “cautiously daring”. The most revolutionary proposal had—unsurprisingly—come from Mr. Gaja, and even that proposal did not relate directly to draft guideline 2.6.10, though it could most usefully be inserted in it. The proposal, which followed on from the distinction that Mr. Gaja had drawn between major and minor objections to reservations, was that the Commission should establish a presumption, one way or the other, in the frequent cases in which an objecting State did not explain the reasons for its objection. Although he had already explained why the distinction between major and minor objections was not clear to him or, he believed, to others, it might conceivably be useful to establish the presumption that, in the absence of a statement of reasons, an objection had been made on the basis of the reservation’s incompatibility with the object and purpose of the treaty (a “major” objection); alternatively, the opposite presumption could be made. His own view, however, was that there was not much point in such a presumption, unless the effects of the two kinds of objection were different, which he doubted. If it was decided that such a presumption would be a useful addition to the draft guidelines, he would prefer—as would Mr. Gaja—that the objection be presumed to be a minor one.

5. A number of speakers, including Ms. Escarameia and Mr. Fomba, had approved the suggestion that the draft guideline should take the form of a recommendation, although there had been some doubts about the wording. Mr. McRae and Mr. Vázquez-Bermúdez had considered that the phrase “whenever possible” should be deleted. It was disappointing that only seven members had seen fit to respond to the question he had put to the Commission when introducing the debate, namely whether it would be appropriate to draft a guideline parallel to draft guideline 2.6.10, under which reservations, too, should indicate the reasons why they were being made. Of those who had commented, Mr. McRae had expressed concern that States might be more reluctant to disclose their reasons publicly than in the case of objections, but that argument did not hold water, since States would be

free to ignore the guideline, which would take the form of a mere recommendation. The important question was not whether States would follow such a recommendation but whether such a guideline was or was not desirable. Mr. Caffisch, Mr. Candioti, Ms. Escarameia, Mr. Fomba and Mr. Vázquez-Bermúdez had all replied in the affirmative. There thus seemed to be considerable support for a new guideline along those lines. He was inclined to take it that the silence on the part of other members meant that they too were well disposed to the idea, but perhaps the Commission should break with tradition and let members who had not yet spoken comment on his suggestion. If sufficient support was forthcoming, he would prepare a note justifying the drafting of such a guideline.

6. Draft guideline 2.6.11 (Non-requirement of confirmation of an objection made prior to formal confirmation of a reservation) had aroused little comment, understandably, since it simply repeated article 23, paragraph 3, of the 1986 Vienna Convention. Ms. Escarameia had, however, pointed out that, contrary to the assertion in paragraph 114 of the report, an objection could have effects for the other contracting States. What she had said about treaties that did not enter into force as the result of an objection was correct, but only with regard to the plurilateral treaties provided for in article 20, paragraph 2, of the Vienna Conventions. The same did not apply to multilateral treaties in general. Although her comments would not affect the wording of the draft guideline, they would need to be reflected in the commentary.

7. Draft guideline 2.6.12 (Non-requirement of confirmation of an objection made prior to the expression of consent to be bound by a treaty) had been the subject of several comments, the most detailed of which had come from Ms. Xue, who had rightly pointed out that the guideline—which she did not oppose—applied only to formal treaties, namely those which entered into force only when a State deposited its instrument of ratification or the equivalent, as opposed to those that entered into force after signature alone. That principle was certainly very strong in francophone doctrine, and he accordingly welcomed the importance attached to it by Ms. Xue, but he wondered whether it should be mentioned in the draft guideline itself or whether a discussion in the commentary would suffice.

8. Mr. McRae, Mr. Yamada and Mr. Hmoud had been concerned at the excessive time that was likely to elapse between the formulation of an objection and the time when it produced effects. Their concerns were similar to those expressed with regard to draft guideline 2.6.5 (b) (Author of an objection). He recognized that such a risk existed, but did not see how it could be avoided. It was to be hoped that the Drafting Committee would come up with a solution. He could not support the radical suggestion made by Mr. Hmoud, since he thought it neither logical, practical, nor in line with current practice to restrict the freedom to formulate objections to contracting States. However, the line that the Drafting Committee decided to take on draft guideline 2.6.5 (b) would inevitably have an impact on the wording of draft guideline 2.6.12.

9. The main problem arising from draft guideline 2.6.13 (Time period for formulating an objection), which largely

reproduced article 20, paragraph 5, of the 1986 Vienna Convention, related to the fact that, as he had pointed out in the report and in his introductory statement, it repeated much of the third paragraph of draft guideline 2.1.6 (Procedure for communication of reservations), which the Commission had, rather surprisingly, decided to retain, even though it related to the procedure for the communication of reservations rather than of objections. He had asked how the situation should be tackled: whether the repetition could be accepted for the first reading of the draft guidelines or whether either draft guideline 2.6.13 or the third paragraph of draft guideline 2.1.6 should be deleted, with consequential adjustments to the commentary. All those members who had spoken had favoured the deletion of the third paragraph of draft guideline 2.1.6. Surprisingly, Mr. Caflich had said that principles were dangerous and had advocated taking immediate action. In less picturesque language, Ms. Escarameia, Mr. Fomba and Mr. Vázquez-Bermúdez had supported that position. Mr. Gaja's view seemed to be that, once the third paragraph of draft guideline 2.1.6 had been deleted, the text of the second paragraph of the same guideline and the text of draft guideline 2.6.13 should also be amended. The answer to Ms. Jacobsson's question about the phrase "after it is notified of the reservation" was that the phrase was, as explained in paragraph 125 of the report, taken from article 20, paragraph 5, of the Vienna Conventions. He drew attention to the fact that the procedure for communication of reservations, covered by draft guidelines 2.1.5 and 2.1.6, was the subject of a lengthy commentary to be found in the Commission's report to the General Assembly on its fifty-fourth session.¹⁰¹

10. As he had said at the outset, draft guidelines 2.6.14 (Pre-emptive objections) and 2.6.15 (Late objections) had been the subject of the most criticism. The fact that the criticisms had been constructive and broadly similar in tenor would greatly facilitate the Drafting Committee's work. He accepted the general thrust of the comments made, if not necessarily all the proposed textual amendments. Although the two draft guidelines were, obviously, different, they also had much in common. In both cases, the author of an objection wanted to express opposition to a reservation outside the time frame established by the Vienna Conventions. He had, he believed, managed to give both draft guidelines real legal force, but perhaps he had allowed himself to be carried away by his flexible conception of what could be categorized as a legal concept, which went beyond what most people would call positive law. Most speakers, however, had obviously thought that the draft guidelines assumed objections formulated outside the established time limits to have effects that in fact they lacked. Indeed, some, including Mr. Caflich, Mr. Candioti, Ms. Escarameia, Ms. Jacobsson and Mr. Kolodkin, had questioned whether such a procedure could be termed an objection, and had suggested that it should be called a "communication". Mr. Wisnumurti, however, had—rightly, in his view—said that the term "communication" related only to the form that such a reaction took; it did not convey its negative nature. Mr. Nolte had suggested the phrase "objecting communications", for which, although it was acceptable in English, it was hard to find a satisfactory equivalent in French. His

own preference would be for the phrase "objecting declarations", since that would highlight the close relationship between unilateral and interpretative declarations that he had mentioned in his introductory statement. Although similar to such declarations, however, objecting declarations, whether made early or late, belonged in a category of their own.

11. Mr. Gaja seemed to deny that pre-emptive objections had any legal effect, maintaining that an objecting State should be free to widen the scope of its objection when—though he personally would prefer to say "until"—the scope of the reservation was widened. It was an important point: a pre-emptive objection had legal effects only once the reservation had actually been formulated and notified. That, incidentally, showed that such an objection did have a potential or delayed effect. Until that time, a State could withdraw it or widen its scope without any adverse consequences. The text should, as Mr. Gaja said, be carefully reviewed.

12. In Mr. Caflich's view, such objections were real objections but did not take effect until the reservation itself was formulated. That seemed a sufficient response to the point raised by Ms. Xue, who had expressed doubts as to the usefulness of such "warning" objections, even though they were common practice. In his view, they were extremely useful: it was very important for States to have some idea of what kind of reaction a reservation was likely to provoke. As for a point raised by Ms. Escarameia, it went without saying that potential objections, like real objections, must be communicated to the other parties to a treaty. Otherwise, there would be no point in formulating such "warning" objections.

13. Mr. Yamada had asked how the draft guideline would affect "intermediate" objections, such as that made by Japan, which was discussed in paragraph 131 of the report. It was a difficult question, but two points could be made. First, although he strongly doubted the validity of reservations with "super-maximum" effect, those having an intermediate effect, which accepted the entry into force of a treaty as between the reserving and the objecting State while excluding treaty relations to an extent going beyond the provisions to which the reservation related, seemed compatible with the Vienna Conventions, which provided for minimum and maximum effects in the case of reservations. The second point was that, on closer inspection, the Japanese reservations in question proved to be simple declarations which the Government of Japan had then modified as it saw fit. That analysis provided further confirmation of the fact that there was nothing to prevent a State from reconsidering its pre-emptive objections.

14. All in all, it seemed that the main objection to draft guideline 2.6.14 was terminological rather than really substantive; many members were plainly of the opinion that it was misleading to describe such declarations as objections and that the term needed some qualification.

15. The criticism of draft guideline 2.6.15 had been more far-reaching, extending beyond mere terminological questions. Mr. Kolodkin, supported by Mr. Caflich, Ms. Escarameia, Mr. Fomba, Mr. Hmoud, Mr. McRae, Mr. Vázquez-Bermúdez, Mr. Wisnumurti and Ms. Xue had

¹⁰¹ *Yearbook ... 2002*, vol. II (Part Two), pp. 34–42.

submitted that late objections did not fall within the definition of objections to reservations supplied in draft guideline 2.6.1 as supplemented by draft guideline 2.6.13. On that point, he was unsure whether he had been convinced by Mr. Kolodkin's line of argument or that of the members who held similar views. First, draft guideline 2.6.1 had deliberately—and wisely—not defined an objection in terms of the time at which it was entered. Secondly, he continued to be of the view that the questions of definition and validity should not be confused. An objection which was not valid for temporal reasons would nevertheless constitute an objection, just as a late reservation, or a reservation incompatible with the object and purpose of a treaty, while not being valid, would still be a reservation, since definition and validity were separate issues. Objections, like reservations, could be valid or invalid. It could not be averred that a reservation was not a reservation because it was invalid, or that a late objection, being invalid, was not an objection. On the contrary, it was first necessary to determine whether a declaration could be described as a reservation or an objection, before going on to ascertain whether the reservation or objection was or was not valid.

16. It was therefore not on the basis of the argument put forward by Mr. Kolodkin and those who had supported him that he had ultimately come to agree with those members' basic position, but rather because, from a strictly positivist point of view, it was incorrect to say that what, for want of a better expression, he termed "late objections" produced "not all" the legal effects of an objection, as in point of fact they produced none of those effects. That conclusion would obviously entail a comprehensive recasting of draft guideline 2.6.15.

17. Mr. McRae's development of Mr. Kolodkin's argument and his explanation of why such declarations had practical, but no legal, effects raised a fundamental question. The refusal to characterize the real effects produced by a declaration of a legal nature as "legal effects" bespoke a debatable and somewhat narrow conception of what constituted "law". Sometimes a little general philosophy did not go amiss; his own notion of law was certainly broader than that of the vast majority of other members. While he did not share that highly positivist conception of law, he respected it and acknowledged that it was too widespread to warrant any attempt to oppose it. Despite his doctrinal regrets, he therefore conceded defeat, and in the Drafting Committee would support the idea that "late objecting declarations", to use the infelicitous term, did not produce any legal effects. But after all, as Mr. Candioti and Mr. Yamada had pointed out, the members were not meeting in order to defend doctrinal stances, but to help States, international organizations, courts, diplomats and even the academic community to put the law into practice.

18. He therefore recommended that draft guidelines 2.6.7 to 2.6.15 should be referred to the Drafting Committee in their entirety.

19. The CHAIRPERSON said he took it that the Commission wished to refer draft guidelines 2.6.7 to 2.6.15 to the Drafting Committee.

It was so decided.

20. The CHAIRPERSON invited members to turn to the discussion of draft guidelines 2.7.1 to 2.7.9, contained in paragraphs 145 to 180 of the eleventh report of the Special Rapporteur.

21. Ms. ESCARAMEIA said that while draft guideline 2.7.1 (Withdrawal of objections to reservations) followed the wording of article 22, paragraph 2, of the 1986 Vienna Convention, that article dealt with other procedural issues not covered by the draft guideline in question which, as the Special Rapporteur had emphasized, was concerned only with the time at which an objection to a reservation might be withdrawn. She therefore wondered why it had not been entitled "Time of withdrawal of objections to reservations".

22. She concurred with the contents of draft guidelines 2.7.2 (Form of withdrawal of objections to reservations) and 2.7.3 (Formulation and communication of the withdrawal of objections to reservations). However, the title of draft guideline 2.7.4, "Effect of withdrawal of an objection", was too broad. Although the provisions of article 20, paragraph 5, of the Vienna Convention were applicable to objections, withdrawal of the latter could have several additional effects, which the Commission had yet to consider. For that reason, it might be advisable to amend the title to a wording such as "Acceptance of reservation by the withdrawal of an objection", to make it more consonant with its contents.

23. While she endorsed draft guidelines 2.7.5 (Effective date of withdrawal of an objection), 2.7.6 (Cases in which an objecting State or international organization may unilaterally set the effective date of withdrawal of an objection to a reservation) and 2.7.7 (Partial withdrawal of an objection), she considered that the title of draft guideline 2.7.8 (Effect of a partial withdrawal of an objection) was also too broad.

24. She did not agree with the suggestion, in paragraph 171 of the report, that the arguments for allowing a partial withdrawal of a reservation might be transposed to the case of a partial withdrawal of objections. In fact, reservations often undermined the integrity of the treaty and should clearly be discouraged if they were incompatible with its object and purpose, whereas objections promoted and sought to preserve the integrity of a treaty since they were intended to persuade the reserving State to change its opinion. They thus fulfilled an important role and could even draw attention to the invalidity of a reservation. No exact parallel could therefore be drawn between the partial withdrawal of reservations and of objections.

25. As for the widening of the scope of an objection, she had been surprised to note that, in paragraph 178 of the report, concerning draft guideline 2.7.9 (Prohibition against the widening of the scope of an objection to a reservation), the Special Rapporteur seemed to infer from the lack of State practice that such widening was prohibited. In other cases, however, the Commission had not cited a dearth of State practice as grounds for concluding that such a practice was forbidden.

26. It was also hard to accept the strict prohibition contained in that draft guideline against any widening of the

scope of an objection to a reservation, even within the 12-month period prescribed by the 1969 Vienna Convention for the formulation of an objection, especially in view of the fact that the opposite presumption applied in the case of reservations. The reason given for prohibiting the widening of the scope of an objection was that it was inconsistent with the principle of good faith. No such argument had, however, been advanced when the Commission had agreed to the widening of the scope of reservations. Clearly, other members' conception of a treaty was rather more contractual than her own, which was more concerned with preventing attacks on the integrity and validity of a treaty. She failed to see why an objection should not be widened within the 12-month period. Even after that period, some form of statement, which might not be termed an objection but which had the effect of giving warning of a party's dissatisfaction with the reservation, ought to be permitted. Draft guideline 2.7.9 was therefore too rigid, especially when compared with the regime applicable to reservations. The Commission should draft a different guideline permitting the widening of the scope of an objection when it occurred within the 12-month period.

27. The provisions on reservations in the 1969 Vienna Convention clearly indicated the time period within which reservations could be made, a matter of such importance that it was even an element of the definition of a reservation: under article 2, paragraph 1 (*d*), reservations could be made only up until the time the State became a party to a treaty. Draft guideline 2.3.1 had, however, permitted the late formulation of reservations, provided that no other contracting party objected.¹⁰² The Commission had also allowed the widening of the scope of a reservation, if no contracting party objected, in draft guideline 2.3.5.¹⁰³ In Ms. Escarameia's view, those draft guidelines conflicted with the Vienna Convention and sanctioned a practice that was undesirable.

28. Article 20, paragraph 5, of the 1986 Vienna Convention provided that a State or international organization could raise an objection to a reservation within 12 months of being notified of the reservation, but did not specify how many objections could be made to the same reservation within that period and was silent on the possibility of widening the scope of an objection to a reservation within those 12 months. While she conceded that such action might constitute abuse of a right and would not always be consonant with good faith, that was not true in all circumstances. Since draft guideline 2.7.9 categorically prohibited any such widening, the Commission seemed to be applying more favourable treatment to reservations than to objections. She could not agree with that approach.

29. While draft guidelines 2.7.1 to 2.7.8 could be referred to the Drafting Committee, draft guideline 2.7.9 deserved further consideration, and might need to be supplemented with a further guideline.

30. Mr. GAJA said that, if he had understood correctly, the reason the Special Rapporteur was of the opinion that the scope of an objection to a reservation could not be widened was that, once an objection had been made, the treaty entered into force as between the reserving State and the objecting State, unless the latter opposed the entry into force of the treaty in their bilateral relations. Hence a subsequent objection to the reservation, even within the period prescribed by the Vienna Convention, would not produce any effect, as the reservation would be deemed to have already been accepted.

31. That argument could apply only if the reservation to which the objection was made was the only one to be formulated by a State or international organization. In the event of several reservations being made, there was nothing to prevent a State from raising an objection first to one reservation, then to another, within the time period mentioned in article 20, paragraph 5, of the Vienna Convention. That possibility was not excluded by the Vienna Convention. While all reservations had to be made, or confirmed, at the time of ratification or of any other act of acceptance of the treaty, there was nothing to indicate that objections must all be made at the same time. It would be helpful to make that point in a draft guideline, or at least in the commentary.

32. Similarly, it would be advisable to specify, at least in the commentary, that if a reservation had been completely withdrawn, the objection pertaining to it automatically ceased to have effect and required no withdrawal. In the event of the partial withdrawal of a reservation, the situation was more complicated and should be elucidated in the commentary.

33. Mr. PETRIČ began by thanking the Secretariat, and in particular Ms. Arsanjani, Secretary to the Commission, for their friendly and effective assistance in the preparation of the Commission's work, and in enabling new members to integrate into the Commission and resolve the many practical problems associated with their stay in Geneva.

34. The topic of reservations to treaties was both intellectually stimulating and of great practical importance. The highly diversified and sometimes controversial practice of States and international organizations with regard to reservations and objections thereto called for the formulation of guidelines on those matters. The Special Rapporteur's proposals were well grounded in existing practice, the conclusions of previous special rapporteurs, and the relevant jurisprudence and doctrine.

35. He concurred with the Special Rapporteur's views, conclusions and proposals concerning the withdrawal and modification of objections to reservations, as set forth in paragraphs 145 to 180 of his eleventh report. He endorsed the conclusion set forth in paragraph 150 that, although the withdrawal of a reservation and the withdrawal of an objection had different effects on the life of a treaty and differed in their nature and their addressees, they were similar enough to be governed by comparable rules and procedures. The Special Rapporteur had been wise to focus on the form of, procedure for and effects of withdrawing an objection to a reservation, the time at which

¹⁰² For the text of this draft guideline and the commentary thereto, see *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 185–189.

¹⁰³ For the text of this draft guideline and the commentary thereto, see *Yearbook ... 2004*, vol. II (Part Two), pp. 106–108.

such a withdrawal produced effects, and the issues raised by partial withdrawal and the widening of the scope of an objection to a reservation.

36. The 1969 and 1986 Vienna Conventions provided clear answers to some of those issues. Draft guidelines 2.7.1 and 2.7.2 reproduced the wording of the Vienna Conventions and therefore required no amendment or in-depth discussion. Similarly, draft guideline 2.7.3 was both logical and acceptable in that it proposed that guidelines 2.5.4, 2.5.5 and 2.5.6 should be applicable *mutatis mutandis* to the withdrawal of objections to reservations.

37. He endorsed the Special Rapporteur's view that the withdrawal of an objection produced more effects than the withdrawal of a reservation. For that reason, the complicated questions discussed in paragraphs 158 to 160 of the report regarding draft guideline 2.7.4 would clearly have to be revisited in due course. As for draft guideline 2.7.5 (Effective date of withdrawal of an objection), the Special Rapporteur's proposal to reproduce the wording of article 22, paragraph 3 (b), of the 1969 Vienna Convention in the draft guideline was sensible. Any attempt to reflect all the problems and considerations set out in paragraphs 161 to 167 of the report would probably only render the draft guideline less clear.

38. Draft guideline 2.7.6 (Cases in which an objecting State or international organization may unilaterally set the effective date of withdrawal of an objection to a reservation) and the reasoning behind it should not give rise to any major difficulties at the present stage. However, the question of the partial withdrawal of objections (draft guideline 2.7.7) was extremely complex, especially if one accepted the premise that a distinction must be drawn between different categories of objections according to their effects, ranging from super-maximum, to maximum, to normal. Although, in the Special Rapporteur's opinion, the need for a rule was hypothetical, since there were no real cases of a partial withdrawal of an objection, draft guideline 2.7.7 did not provide any answers to the main queries raised in paragraph 172 as to the legal effects of such a partial withdrawal, and further consideration of that topic would therefore be required. The superfluous word "that" in the last line of the first paragraph of draft guideline 2.7.7 was probably indicative of drafting difficulties, and should be deleted.

39. The structure of draft guidelines 2.7.7 (Partial withdrawal of an objection) and 2.7.8 (Effect of a partial withdrawal of an objection) should be more logical. Draft guideline 2.7.7 should be confined to the right to make a partial withdrawal and to the procedure for doing so, while draft guideline 2.7.8 should be concerned with the legal effects of a partial withdrawal. As a result, the second sentence in draft guideline 2.7.7 should be transposed to draft guideline 2.7.8.

40. Draft guideline 2.7.9 (Prohibition against the widening of the scope of an objection to a reservation) was interesting, because no mention had been made of the possibility of such a practice, either in the Commission's previous work, or in the Vienna Conventions (including the *travaux préparatoires* thereto). The Special Rapporteur had been right to conclude in paragraphs 176 to 180

of his report that such action was simply not possible. Draft guideline 2.7.9 reflected that fact and was therefore acceptable. It was, however, necessary to consider whether there was any need for such a guideline, since it would be inadvisable to give States the impression that widening the scope of an objection to a reservation might become admissible at some time in the future.

41. With that proviso, he was in favour of referring draft guidelines 2.7.1 to 2.7.9 to the Drafting Committee.

The meeting rose at 11.10 a.m.

2920th MEETING

Wednesday, 16 May 2007, at 10.05 a.m.

Chairperson: Mr. Ian BROWNLIE

Present: Mr. Al-Marri, Mr. Cafilisch, Mr. Candiotti, Mr. Comissário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.

Organization of the work of the session (*continued*)*

[Agenda item 1]

1. The CHAIRPERSON announced that the Bureau, which had agreed on the work plan for the following three weeks, had concluded that the Commission could complete its consideration of the reports of Special Rapporteurs currently before it by 5 June and therefore recommended that the first part of the session should be shortened by three days. That recommendation was consistent with the repeated request made by the General Assembly in its resolutions encouraging the Commission to take "cost-saving measures". If he heard no objection, he would take it that the Commission agreed with the Bureau's recommendation.

It was so decided.

Reservations to treaties (*continued*) (A/CN.4/577 and Add.-21, sect. C, A/CN.4/584, A/CN.4/586, A/CN.4/L.705)

[Agenda item 4]

ELEVENTH REPORT OF THE SPECIAL RAPPORTEUR (*concluded*)

2. The CHAIRPERSON invited the members of the Commission to continue their consideration of the topic of reservations to treaties and in particular draft guide-

* Resumed from the 2918th meeting.