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**Second oral report by the Chairman
of the Working Group on Reservations to Treaties,
Mr. Marcelo Vázquez Bermúdez**

28 July 2011

Mr. Chairman,

It is my pleasure, today, to present my second report on the work of the Working Group on Reservations to Treaties.

I. Conclusions on the reservations dialogue

You will recall that the Commission, at its 3099th meeting on 6 July 2011, referred to the Working Group on Reservations to Treaties the consideration of the text of the “Draft recommendation or conclusions of the International Law Commission on the reservations dialogue”, as it appeared in paragraph 68 of the Special Rapporteur’s seventeenth report on Reservations to treaties (A/CN.4/647).

During three meetings held on 6, 12 and 14 July 2011, the Working Group considered that text paragraph by paragraph. After careful consideration, and also in the light of the practice previously followed of the Commission, the Working Group agreed that it was more appropriate for the Commission to elaborate a set of conclusions on the question of the reservations dialogue, to be followed by a

recommendation to the General Assembly, rather than to address direct recommendations to States. The nine conclusions provisionally adopted by the Working Group, which are preceded by eight preambular paragraphs and followed by a recommendation to the General Assembly, are reproduced in document A/CN.4/L.793. This document was circulated to the members of the Commission on Monday 25 July.

Mr. Chairman,

It is not my intention to provide a detailed description of all the modifications that were introduced by the Working Group to the text originally proposed by the Special Rapporteur. Several of these modifications are either linguistic in nature, or intended to make the text more nuanced or less assertive. Furthermore, the wording was slightly modified in order to differentiate between States and international organisations on the one hand, and monitoring bodies on the other hand.

I should only like to draw the Commission's attention to the following points:

With respect to the preamble:

- The second preambular paragraph, including a reference to the Special Rapporteur's seventeenth report, has been added by the Working Group;
- The third preambular paragraph constitutes a reformulation of the original preambular paragraph 2; it now refers to "the need to achieve a satisfactory balance between the objectives of safeguarding the integrity of multilateral treaties and securing the widest possible participation therein";

- The fourth and fifth preambular paragraphs result from the splitting and reformulation the original preambular paragraph 3;
- In the last preambular paragraph, the reference to regional organizations has been replaced by a general reference to international organizations.

With respect to the conclusions listed under Section I:

- The first part of the text of the third conclusion is new. It refers to the importance of statements of reasons by the author of a reservation for the assessment of the validity of that reservation. The Working Group felt that the inclusion of this element was important in order to balance the statement contained in the fifth conclusion which refers to the potential usefulness, for the assessment of the validity of reservations, of the concerns expressed about a reservation by States and international organizations, as well as monitoring bodies.
- The content of the fourth conclusion is taken from the last sentence of paragraph 1 originally proposed by the Special Rapporteur, with the addition of a reference to the possible of limitation of the scope of certain reservations as an alternative result of the periodic review of reservations.

Finally, I should point out that the recommendation contained in Section II corresponds, with minor linguistic adjustments, to paragraph 9 of the text originally proposed by the Special Rapporteur.

The Working Group recommends to the Commission that the text reproduced in this document A/CN.4/L.793 be included in an annex to the Guide to Practice.

2. Recommendation on mechanisms of assistance in relation to reservations

Mr. Chairman,

At its 3016th meeting on 15 July 2011, the Commission also referred to the Working Group on Reservations to Treaties the consideration of the draft recommendation on technical assistance and assistance in the settlement of disputes concerning reservations, which appears at paragraph 101 of addendum 1 to the Special Rapporteur's seventeenth report (A/CN.4/647/Add.1).

The Working Group considered that text at its meeting of 26 July. I should mention that the Special Rapporteur submitted to the Working Group a revised version of the draft recommendation, in the light of the comments made during the plenary debate. The Working Group worked on the basis of this revised text presented by the Special Rapporteur, which was considered paragraph by paragraph.

Taking into account the positions expressed by some members during the plenary debate, the Working Group considered that the text of this recommendation should be rather formulated in terms of a *suggestion* addressed to the General Assembly. Moreover, the Working Group was of the view that the Commission's proposals should remain general so as to leave largely open the modalities of any mechanism that could be established. The text of the recommendation as provisionally adopted by the Working Group is reproduced in document A/CN.4/L.795, an advance copy of which has been distributed, in English and French, to the members of the Commission. The Working Group proposes that such a recommendation be included in Chapter IV of the Commission's draft report on the work of the present session.

Here again, I will not describe all the modifications that were introduced to the text originally proposed, but I will simply draw the Commission's attention to the main changes.

In this regard, I should first mention that the Working Group deemed it preferable to limit the scope of the recommended mechanisms to States; thus, the references to international organizations were deleted from the text of the recommendation and from the annex.

With respect to the preamble:

- A reference to the *formulation* of reservations was included in preambular paragraph 2;
- The last paragraph of the preamble now refers to “flexible mechanisms” in general, so as to cover both the “observatories” referred to in operative paragraph 1 and the assistance mechanism that is envisaged in operative paragraph 2 and in the Annex.

With respect to the operative paragraphs:

- Operative paragraph 1 is new. Based on a proposal by the Special Rapporteur, it contains a suggestion concerning the possible establishment of an “observatory” on reservations to treaties at the universal level, within the Sixth Committee of the General Assembly, as well as a suggestion that the General Assembly recommend the establishment of such mechanisms at the regional or sub-regional levels. As indicated in footnote no. 1, such “observatories” could draw their inspiration from that established within the Council of Europe *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI).

- Operative paragraph 2, which results from the merging of the original paragraphs 2 and 3, suggests the establishment of a reservations assistance mechanism, as was initially recommended by the Special Rapporteur in his seventeenth report.

With respect to the Annex:

- I should first mention that, following a suggestion by the Special Rapporteur in light of comments made during the plenary debate, reference is now made to a mechanism consisting of “experts” *tout court*, rather than “government experts”.
- The formulation of paragraph (ii) has been simplified; reference is now made to reservations, objections to or acceptances of reservations, without mentioning “interpretation”, “permissibility” and “effects” of reservations.
- In paragraph 3, the term “disputes” was replaced by the more generic expression “differences of views” (in French: “*divergences*”).
- An additional footnote was included, suggesting that the experts engaged in assisting States to settle differences of views should not be the same as those that would have provided assistance to one of the parties.

Mr. Chairman,

This concludes my second report on the outcome of the work of the Working Group on Reservations to Treaties. It is my hope that the Commission will be in a position to take note of this report and of the recommendations of the Working Group regarding an annex to the Guide to Practice on the reservations dialogue and

the inclusion in the draft report of the Commission of a recommendation on mechanisms of assistance in relation to reservations.

Thank you, Mr. Chairman.