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Summary record of the 2548th meeting

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Extract from the Yearbook of the International Law Commission:-
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19. Mr. CRAWFORD (Special Rapporteur) said that the amendments proposed by Mr. Economides were entirely acceptable. The Drafting Committee, which would meet when the session resumed in New York, would benefit from them.

20. Following a discussion in which Messrs CANDIOTI, CRAWFORD (Special Rapporteur), KUSUMA-ATMADJA and ROSENSTOCK took part, the CHAIRMAN suggested that the Commission should refer draft articles 1 to 4 to the Drafting Committee.

It was so agreed.

The meeting rose at 4.10 p.m.

2548th MEETING

Friday, 12 June 1998, at 10.05 a.m.

Chairman: Mr. João BAENA SOARES

Present: Mr. Addo, Mr. Brownlie, Mr. Candiotti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Galicki, Mr. Hafner, Mr. Kusuma-Atmadja, Mr. Melescanu, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Simma, Mr. Thiam, Mr. Yamada.

Reservations to treaties (*continued*)* (A/CN.4/483, sect. B, A/CN.4/491 and Add.1-6,¹ A/CN.4/L.563 and Corr.1)

[Agenda item 4]

THIRD REPORT OF THE SPECIAL RAPPORTEUR (*continued*)*

GUIDE TO PRACTICE (*continued*)*

DRAFT GUIDELINE 1.1.4

1. Mr. PELLET (Special Rapporteur) said that he would resume his discussion of the draft guidelines (ILC(L)/INFORMAL/12) with draft guideline 1.1.4, entitled "Object of reservations", which read: "A reservation may relate to one or more provisions of a treaty or, more generally, to the way in which the State intends to implement the treaty as a whole". In his view, draft guideline 1.1.4

was much more important than those considered so far, and could have practical implications.

2. As he had pointed out in his presentation (2541st meeting), he had omitted to refer in draft guideline 1.1.4 to international organizations, which were obviously concerned as well. The words *ou l'organisation internationale qui la formule* ("or the international organization which formulates it") should therefore be inserted after *dont l'État* ("in which the State").

3. Draft guideline 1.1.4 was important for the following reason: in the Vienna Conventions, a reservation was defined in terms of its purpose, namely as a statement purporting to exclude or to modify the legal effect of certain provisions of the treaty in their application to the State or international organization formulating the reservation. There had been much discussion in the literature about the words "certain provisions" and as to whether a statement which did not concern a specific provision or provisions, but the treaty as a whole, could be called a reservation. That question had long been resolved in practice in a way which departed somewhat from the letter of the Vienna definition but was in keeping with its spirit: through the practice of what might be called "across-the-board" or "transverse" reservations, that is to say, reservations which did not refer to specific provisions of a treaty but, more generally, to the way in which the State or international organization formulating the reservation intended to apply the treaty as a whole. The use of such reservations was very common: they could concern the circumstances under which a State would or would not apply a treaty, or certain categories of persons to whom it denied the benefits of the treaty, or the exclusion of certain territories from the treaty as a whole. In all those cases, the reservation did not concern specific provisions of the treaty, but the effect of the treaty for the State formulating the reservation. Reservations of that kind, a mere handful of which he had cited in paragraph 37 of ILC(L)/INFORMAL/11, had never, as far as he knew, given rise to objections as such, provided that the reservation was not incompatible with the purpose of the treaty. That of course was a question of the validity of the reservation, not of its definition. He hoped the members of the Commission would confine their observations to the latter issue.

4. It would be excessively formalistic of the Commission if, in interpreting the Vienna Conventions, it did not address a common practice which might conceivably cause a problem if a State decided to invoke the Vienna definition literally, in a manner contrary to its spirit; for instance, if a State were to argue that certain legal experts challenged the idea that a reservation could refer to a treaty as a whole if the reservation was looked at on the basis of the Vienna definition, which to his mind was not very satisfactory. He did not think that definition should be changed, but simply interpreted in the light of practice. He therefore believed the Commission should adopt wording along the lines of draft guideline 1.1.4.

5. Mr. HAFNER said that he preferred a factual approach which only took into consideration instruments which already existed. International law must be based on the facts. That led him to raise a number of doubts which he had about draft guideline 1.1.4. The Special Rapporteur

* Resumed from the 2545th meeting.

¹ Reproduced in *Yearbook* . . . 1998, vol. II (Part One).

teur himself had stressed the problem to which the issue could give rise. He interpreted the Special Rapporteur's proposal (2541st meeting), for the inclusion of a general clause concerning the obligation that a reservation should be in conformity with the 1969 Vienna Convention, to relate not only to draft guideline 1.1.3, but above all to draft guideline 1.1.4, and to be an attempt to eliminate certain problems which arose in connection with it. In his own view, draft guideline 1.1.4 was unacceptable. If the goal of international law was to create a basis for stable and predictable international relations and lessen their complexity and uncertainty, reservations of the kind contemplated in draft guideline 1.1.4 were unlikely to do so; on the contrary, if a State formulated such a reservation, the other parties to the treaty would never know by what obligations the State formulating the reservation was bound and for the violation of which provisions of the treaty that State must assume responsibility.

6. Reservations of that kind reflected some hypocrisy on the part of States, which were prepared to accept a treaty while at the same time refusing to be bound by obligations stemming from it. Although being party to a treaty without assuming its obligations might have an educational effect on a State, that would not contribute to predictable international relations. The Austrian reservation to the Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques,² cited by the Special Rapporteur in paragraph 37 of ILC(L)/INFORMAL/11, stated that "its cooperation within the framework of this Convention cannot exceed the limits determined by the status of permanent neutrality", but no one knew the exact content of the status of permanent neutrality. Hence the vague nature of the obligations which Austria had assumed.

7. There had already been cases which demonstrated the impermissibility of such reservations. First, there had been cases before the European Court of Human Rights in which the general, or "transverse", scope of reservations had been discussed. Of course, it might be argued that that was merely because of the wording of article 64 of the European Convention on Human Rights, but in his view article 64 reflected what existed in international law. Secondly, a number of States, above all members of the European Union, had taken a position against such reservations. To cite an example, they had jointly drafted, and separately transmitted, a declaration which had termed inadmissible, owing to its general nature, the reservation made by Saudi Arabia upon its accession to the International Convention on the Elimination of All Forms of Racial Discrimination. The part of that reservation objected to read: "[. . . it will] implement the provisions [of the above Convention], providing these do not conflict with the precepts of the Islamic Shariah".³ Similar declarations had been made relating to reservations of a like nature. Consequently, as he saw it, it had become recent international practice that "transverse" reservations as contemplated in draft guideline 1.1.4 were impermissible in international law, and he did not think that the impression should be given that they enjoyed any support.

² See *Multilateral Treaties . . .* (2542nd meeting, footnote 3), p. 878.

³ *Ibid.*, p. 100.

8. Mr. ECONOMIDES said that, although the Special Rapporteur had reproduced international practice in the area, Mr. Hafner had rightly raised a number of problems. While the first part of draft guideline 1.1.4, stating that "a reservation may relate to one or more provisions of a treaty", repeated what was in the definition of a reservation, the second part, which referred to "the way" in which the State intended to implement the treaty as a whole, was new. That "way" must be limited; otherwise, the reservation was not a reservation but an interpretative declaration. Since the point of drafting a Guide to Practice to assist States was to give them advice, the Guide might stress that States should avoid formulating general or vague reservations and should enunciate as clearly as possible the restrictions which they intended to apply to the treaty. General reservations of the kind Mr. Hafner had mentioned were inapplicable and introduced an element of instability into international relations, because other parties could not know exactly what commitments a State was entering into. General reservations were a fact, but they must be made more restrictive and less general.

9. Mr. ROSENSTOCK said that the previous speaker had raised an interesting question in suggesting that States should be given advice in drafting reservations. He was pleased to note that Mr. Economides did not disagree that draft guideline 1.1.4 was a reasonable reflection of the current status quo. The fact that reservations of the kind referred to in that text had in some cases been contrary to the object and purpose of the treaty said nothing more than that reservations of the most specific nature to a particular treaty might be contrary to its object and purpose. The practice of the European institutions under article 64 of the European Convention on Human Rights merely meant that where there was a specific obligation to spell out the law, that obligation was not carried out where the institutions in question thought that the law should be spelled out yet in some cases did not insist on that, whereas in others they insisted that there was a defect because the law had not been spelled out. That did not establish a universal norm prohibiting reservations with regard to the way in which a State planned to implement a treaty. There might be some which were so vague as to be incomprehensible and others which were contrary to the treaty's object and purpose, but that was no more true, even though more likely, with that class of reservations than with those relating to one or more provisions of the treaty. Consequently, although he had an open mind on advising States against formulating reservations of the former kind and on warning them that such reservations might raise problems, he did not think it was valid to conclude that such a reservation was by definition impermissible or not part of the pattern of State conduct which the Commission was currently seeking to organize. He wished to see draft guideline 1.1.4 kept exactly as it was, with a note that it might be one of the provisions concerning which the Commission might wish to make a few comments.

10. Mr. PELLET (Special Rapporteur) pointed out that he had not spoken of general, but of "transverse" reservations. Some of them might be general, while others were not. Mr. Hafner had raised the issue of the validity of reservations and not their definition. The permissibility of "transverse" reservations was a matter of the law of treat-

ties. He asked members to bear in mind that the discussion was not about validity, but about definitions.

11. Mr. MELESCANU agreed fully that the way in which draft guideline 1.1.4 was worded reflected the practice of States in the area of reservations. He was in favour of that text, subject to the inclusion of a suitable commentary.

12. Mr. Hafner's view was correct, but as the Special Rapporteur had pointed out, it must be accepted that a reservation had been made, and, bearing in mind the example cited by Mr. Hafner, the State must raise an objection to the reservation. If a reservation was so general that other States could not accept it, they had only to exercise their right to object to it. Needless to say, a reservation so objected to had no legal effect in relations between the objecting States and the State which had formulated the reservation. There was no danger in the situation as long as the basic tenets of the Vienna Conventions were applied.

13. Concerning the point raised by Mr. Rosenstock, the Commission had not discussed whether the Guide to Practice would have a commentary. If it was decided that it would, he was in favour of each definition having an explanation. Nothing prevented the Commission from including in the definition a number of interpretative elements in order to guide States in the application of reservations. The text of draft guideline 1.1.4 should therefore remain as it was and the Commission should consider what interpretation or advice to include in the commentary to it.

14. Mr. DUGARD said that it could prove extremely difficult in practice to distinguish between the definition of a reservation and its admissibility. If there was evidence to suggest that a particular category of unilateral statement was unacceptable, surely that category should be excluded from the definition of a reservation. He was not convinced, moreover, that draft guideline 1.1.4 accurately reflected State practice. Many States had made objections similar to that mentioned by Mr. Hafner to reservations that were unduly vague and general. It could therefore be argued that State practice was not clear-cut and that there was scope for progressive development as an alternative to codification of existing practice. The competence of a State to enter sweeping reservations must be questioned and the Commission, in looking for an answer, should be willing to probe further than the existing provisions of the Vienna Conventions. All in all, draft guideline 1.1.4 needed careful consideration before the Commission endorsed it.

15. Mr. HAFNER said he was well aware of the distinction between the permissibility of reservations and their definition and had never implied that the statements referred to in draft guideline 1.1.4 were not reservations. His problem was with the use of the word "may", which made it unclear whether the draft guideline referred to a definition or to permissibility.

16. In response to Mr. Rosenstock, he said that all aspects of State practice must be taken into account, including that of objections, which might be aimed not only at reservations that were permissible within the meaning of the Vienna Conventions but also at reser-

ations of a different kind that were viewed as impermissible. It was in order to make that point that he had quoted the wording of the European Union objection.

17. Mr. SIMMA thought that the debate was running into difficulties because of what he called the Special Rapporteur's "menu-reading" approach: the Commission had been presented with a tempting bill of fare but told to concern itself solely with its spelling and grammar and refrain from tasting any of the dishes. It would be frustrating to focus on the definition in draft guideline 1.1.4 but ignore the problems it raised. The idea of a definition of reservations that referred solely to cases that were per se impermissible was absurd. The way in which a State intended to implement a treaty as a whole could, in some cases, be impermissible because it was too general or sweeping, a view he had expressed previously in connection with reservations to human rights treaties. But the situation was different if a State indicated, for example, that a treaty was to be interpreted in the light of a clearly set out provision of its Constitution.

18. Mr. MIKULKA said he shared the Special Rapporteur's concern about general statements which purported to indicate how a State would implement a whole treaty. He agreed that the legal implications of, and the regime applicable to, such statements must be examined. He saw no reason, therefore, to accord them a priori recognition as reservations in draft guideline 1.1.4, since they did not necessarily fall within the scope of the definition. The 1969 Vienna Convention definition referred to exclusion or modification of the legal effect of "certain" provisions of a treaty. The *a contrario* corollary of that was that a reservation should not purport to exclude or modify the legal effect of the treaty as a whole. In that regard, draft guideline 1.1.4 seemed to contradict the Vienna definition. However, the Special Rapporteur had rightly drawn attention to the existence of a grey area of the law that called for further consideration.

19. Mr. CRAWFORD said he fully agreed with Mr. Simma and Mr. Mikulka. The discussion should not be confined to the definition in draft guideline 1.1.4 without some reference to the consequences of defining a particular statement as a reservation. The establishment of a unitary system of reservations might imply that certain doubtful statements were in some sense permissible. He urged the Special Rapporteur to proceed on the basis that the issue of permissibility must be addressed. In any event the relationship between the definitions adopted and the substance of the draft guidelines must be considered eventually.

20. Mr. MELESCANU said that even if the Commission omitted any reference to general reservations in the Guide to Practice, States would continue to formulate such reservations because the Vienna Conventions prohibited only those which were incompatible with the object and purpose of the treaty or were expressly prohibited. They should not be prevented from exercising that right.

21. Mr. GALICKI said that a far lengthier and more detailed discussion was necessary before the Commission could decide whether or not certain statements were to be classified as reservations. He had the impression that the

Special Rapporteur was inclined to expand the issue of the object of reservations to include the widest possible range of unilateral statements made by States in connection with treaties. He was not convinced that was the proper way to proceed. The Commission should acknowledge that reservations were by no means the only kind of unilateral statement that could be made.

22. Mr. PELLET (Special Rapporteur) said that those members who feared that draft guideline 1.1.4 would somehow validate general reservations had based their argument on the fact that such statements did not constitute reservations under the Vienna regime, citing the provision concerning incompatibility with the object and purpose of the treaty. In doing so, they were admitting their status as reservations, albeit of an impermissible kind.

23. He understood that members might find it frustrating to be denied a taste of food for the time being, but without that discipline they might be tempted to taste too many dishes at once. It was reasonable to begin with definitions instead of getting bogged down in unproductive arguments.

24. He agreed with Mr. Hafner that the word “may” was infelicitous. He had certainly not intended it to convey any sense of authorization or approval. What he had meant was that a unilateral statement whereby a State or international organization indicated the manner in which it intended to implement the treaty as a whole should be viewed as a reservation. Any such statement would be subject to the reservations regime and must therefore be compatible with the object and purpose of the treaty. If the Commission abandoned the idea of a definition along the lines proposed in draft guideline 1.1.4, it would imply that reservations such as that entered by the United Kingdom of Great Britain and Northern Ireland to the International Covenant on Civil and Political Rights,⁴ referred to in paragraph 37 of ILC(L)/INFORMAL/11 and ILC(L)/INFORMAL/12, were impermissible, which was clearly not the case. Unlike Mr. Hafner, he thought that the reservation by Austria referred to in the same paragraph was also sound and a typical example of many other legitimate “transverse” reservations. Although they were not covered by the letter of the Vienna Conventions, their omission from the Guide to Practice would be an instance of hidebound conservatism.

25. Mr. Crawford had said that the issue of permissibility should currently be considered. That would amount to putting the cart before the horse. To assess whether reservations were permissible, it must first be established whether they could be classified as reservations.

26. Mr. PAMBOU-TCHIVOUNDA said that the relationship between the definition and the permissibility of a reservation was not fortuitous or imaginary, but one that must be borne in mind at all times. The Commission should not present States with a Guide to Practice that failed to mention their obligation to comply with the Vienna Conventions. The entire regime established by those Conventions must be placed in the forefront of the Guide to Practice as a constant frame of reference. Yet in

draft guideline 1.1.4 it was taken for granted. He proposed that it should be made explicit by an addition, at the end of the guideline, of the phrase “provided that the object and purpose of the treaty is thereby preserved”. He would be reluctant to endorse the guideline without such wording.

27. Mr. BROWNLIE said that the Special Rapporteur had made it clear that the parameters laid down in draft guideline 1.1.4 were not intended to deal with the question of validity. Yet its wording and the fact that it fell under the rubric “definition of reservations”, combined with the presumption of regularity, might lead a reader to assume that there was a prima facie validity concealed in the range of possible reservations outlined by the Special Rapporteur. The problem currently was not one of getting agreement about the paragraph among members of the Commission, but of the Drafting Committee finding the right wording, by an indication that, apart from the issue of definition as such, the aim of the drafting—an important one—was to make clear the scope of the Guide to Practice.

28. Mr. CRAWFORD agreed with those remarks and said he had no objection to draft guideline 1.1.4 being referred to the Drafting Committee. However, the extent to which State practice had gone beyond the 1969 Vienna Convention definition of a reservation should not be exaggerated. Many States had grave concerns about purported reservations which actually excluded from the scope of the treaty everything which a Government might consider to be contrary to the nation’s constitution or religious ethic. Those States were not prepared to give up a potential argument under the Vienna Conventions by conceding in advance that all such “transverse” reservations were reservations as defined therein. They wanted to see how the regime of the 1969 Vienna Convention would operate in respect of “transverse” reservations. The agreement to refer the issue to the Drafting Committee must therefore be without prejudice to that substantive point, which could not be concealed under the rubric of a definition.

29. Mr. ECONOMIDES said he was opposed to the distinction which had been drawn between definitions and the validity of reservations. With definitions in existence, a general reservation could be formulated to indicate the way in which a State intended to apply a convention, and such a reservation could not be said to be invalid. The discussion had shown that some “transverse” reservations were permissible: the example had been given of the reservation by the United Kingdom to the International Covenant on Civil and Political Rights. A reservation could thus exclude the application of all the provisions of a treaty, but only for certain categories of persons, and yet remain perfectly valid.

30. Some general reservations were permissible, however, for two reasons. First, because they were not true reservations, since they specified no restrictions, and secondly, because they were so vague that the other parties to the treaty had no way of knowing what the reservation concerned. Such reservations could not be applied in practice. The Commission should provide guidance to States that applied the 1969 Vienna Convention on precisely which “transverse” reservations were valid and

⁴ Ibid., p. 130 and United Nations, *Treaty Series*, vol. 999, p. 287.

which were not. If the matter was sent to the Drafting Committee, it must be given the competence to deal with that substantive issue and to look carefully into the constituent elements of a “transverse” reservation for incorporation in an appropriate text.

31. Mr. ROSENSTOCK said that the comments made by the previous speaker indicated that the matter might be referred to the Drafting Committee. Caution should be exercised, however, about suggesting that “transverse” reservations could be subjected to criteria that differed from those applicable to every reservation, namely that it was inconsistent with the object and purpose of a treaty, that it was too vague or expressly prohibited by the treaty, and so forth. To concentrate attention on “transverse” reservations was not a useful exercise if it went further than the observation that they had a tendency, by their very nature, to raise particular problems. The practice of States in accepting such reservations since the entry into force of the 1969 Vienna Convention left little room for arguing that their acceptance was inconsistent with the meaning of the Convention as States understood it. He knew of no case where a State had rejected a reservation because it was “transverse”; States rejected reservations for being too vague or too general. A case in point was the United Kingdom’s reservation to the International Covenant on Civil and Political Rights regarding military personnel and detainees. There were other cases in which States had clearly accepted “transverse” reservations.

32. Mr. Sreenivasa RAO said the test was ultimately not on what subject and in what way the reservation was made, but whether it was consistent with the basic objective and criteria of the treaty. When, in accepting a treaty, States made their positions known as to how they would implement it, there were often doubts as to whether they were making a reservation or an interpretative declaration, not as to whether the statement was permissible or not. The framers of treaties that dealt with broad social objectives had obviously not expected that, once the treaty was signed, all problems would be resolved. When States, while accepting the basic thrust of the treaty exercise, said they wished to implement the treaty in a particular way, the question arose as to whether that statement was actually a reservation. He did not agree that simply because such a statement was made, it automatically became permissible.

33. Mr. MIKULKA said it was true, as Mr. Rosenstock had said, that some general, unilateral declarations had been rejected precisely because they were too vague. But that was exactly the problem: the aspect of certainty, the requirement that the reservation be the expression of a well-defined and clear intent, had to be part of the definition of reservations. Why should a completely incomprehensible declaration be automatically considered a reservation? As Mr. Sreenivasa Rao had suggested, it could be considered to be an interpretative declaration.

34. The Special Rapporteur’s remarks had currently made it clear that the wording of draft guideline 1.1.4 was the opposite of what he wanted to say, his intention being that all such vague declarations should be examined in the light of the requirements applying to reservations. That was correct, but he himself would go further and say that the real issue was what happened if a State made a general

statement about the way it intended to implement a treaty. The designation of the statement as a reservation from the very outset should be avoided.

35. Mr. PELLET (Special Rapporteur) said that the members of the Commission seemed to agree that “transverse” declarations could be reservations; and all he was asking was that that be spelled out in the Guide to Practice. It was, after all, the most serious omission he had uncovered in the definition of reservations set out in the 1969 Vienna Convention. Mr. Economides had drawn attention to two instances when such declarations could not be considered reservations: when they were interpretative declarations, and when they were too vague. Although that was true, he remained convinced that the question of permissibility came into play.

36. He agreed with Mr. Brownlie that the matter under discussion should be addressed in the Guide to Practice. He did not believe, however, that a text should be referred to the Drafting Committee with conditions attached, for example that it re-examine the entire regime of reservations. In any event he had promised the Commission that he would submit a draft guideline 1.1.9, which would be a “without prejudice” clause; hence, whatever wording was decided on for draft guideline 1.1.4, it would not in any way prejudice the validity of reservations or interpretative declarations. In sum, he thought there was general agreement on the substance within the Commission, but that there was good cause to modify the wording of draft guideline 1.1.4, which created some misunderstandings.

37. Mr. HAFNER said that was precisely the point he had been seeking to make. The basic question, as Mr. Mikulka had pointed out, was whether every declaration intended to change the scope of obligations and rights under a treaty was to be termed a reservation. He had some doubts. If, for example, a treaty excluded all reservations, but a State made one that was intended to change the obligations arising under the treaty, and the other parties reacted only with silence, what would the situation be? Had a reservation been made, after all? Had an agreement been concluded implicitly among the States? That problem underpinned the text of draft guideline 1.1.4 and the definition of reservations in general, and it had to be resolved.

38. Mr. ECONOMIDES said that the heading to draft guideline 1.1.4 should perhaps be changed from “Object of reservations” to “Transverse reservations” or “General reservations”. The text of the guideline might read as currently drafted, with the addition, at the end of the text, of the phrase “providing that such reservations meet the requirements of the 1969 Vienna Convention”. Finally, the text might indicate that the reservation must be sufficiently clear for the other parties to be able to see how the application of the treaty would actually be limited. If couched in those terms, the guideline would be a useful aid.

39. Mr. PELLET (Special Rapporteur) said he did not agree with the second change proposed by Mr. Economides, because the reference to the need for reservations to fulfil the requirements of the 1969 Vienna Convention would be in draft guideline 1.1.9. He could accept a modification of the heading along the lines proposed by

Mr. Economides, but thought that was a matter for the Drafting Committee to work out.

40. He was surprised by Mr. Hafner's position. Article 19, subparagraph (a), of the 1969 Vienna Convention indicated that a State might formulate a reservation unless "the reservation is prohibited by the treaty". How then could one say that the reservation was not a reservation? It was a reservation which, in the very words of article 19, subparagraph (a), was prohibited by the treaty. The argument that a reservation was not a reservation if it was prohibited viewed the problem the wrong way round and amounted to saying that precisely since something was a reservation, it could not be applied because it was prohibited by a treaty. But to modify the definition of a reservation because of the prohibition of making reservations would be entirely inappropriate. Even if a reservation was prohibited by a treaty, it remained a reservation—a prohibited reservation, but a reservation all the same.

41. Yet members of the Commission seemed to take the view that if a reservation was prohibited, it was not a reservation. It had been argued that if a reservation was too vague in the view of another party, it was not a reservation: the example had been given of the Saudi Arabian reservation to the International Convention on the Elimination of All Forms of Racial Discrimination. He did not agree: it was certainly a reservation, but an impermissible one. He was grateful to Mr. Hafner, however, for citing that excellent example of an impermissible reservation.

42. Mr. HAFNER said he had gone further than to say simply that the reservation was impermissible; he had indicated that it had been applied as an impermissible reservation, and that raised the question whether the reservation could still then be called a reservation. If a State accepted a reservation that was contrary to the object and purpose of the treaty, did that mean that the State had modified the treaty, perhaps in violation of a specific amendment procedure? In such a situation, could the reservation—an impermissible reservation which was applied, despite its illegal nature—still be called a reservation?

43. Mr. PELLET (Special Rapporteur) said that in his view it could.

44. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to refer draft guideline 1.1.4 to the Drafting Committee, on the understanding that the Drafting Committee would take into account all the comments made during the meeting.

It was so agreed.

45. Mr. PELLET (Special Rapporteur) said that, in view of the pressure of time, he would prefer to postpone the introduction of the remaining draft guidelines until the beginning of the second part of the session in New York.

46. Mr. GALICKI supported that suggestion for practical reasons. A presentation made at the current meeting would undoubtedly have to be repeated in New York in order to refresh members' memories after an interruption of several weeks.

47. The CHAIRMAN, in reply to a question put by Mr. ECONOMIDES, assured the Commission that the outstanding draft guidelines, including guideline 1.1.9, would be discussed at the second part of the session in New York before being referred to the Drafting Committee.

**Programme, procedures and working methods of the Commission, and its documentation
(A/CN.4/483, sect. G)**

[Agenda item 8]

RECOMMENDATIONS OF THE PLANNING GROUP
TO THE COMMISSION

48. The CHAIRMAN invited members to consider the recommendations of the Planning Group contained in ILC(L)/PG/1. He explained that, for the time being, the Commission was not being asked to consider chapter X of the draft report of the Commission on the work of its fiftieth session.

A. Recommendations for the Commission's current session

REPRESENTATION OF THE COMMISSION AT THE UNITED NATIONS CONFERENCE OF PLENIPOTENTIARIES ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

The recommendation was adopted.

PROGRAMME OF WORK FOR THE SECOND PART OF THE COMMISSION'S PRESENT SESSION

The recommendation was adopted.

B. Recommendations for future sessions of the Commission

MAKING AVAILABLE SPECIAL RAPPORTEURS' REPORTS PRIOR TO THE COMMISSION'S SESSION

The suggestions and recommendation were adopted.

Date and place of the fifty-first session

49. Mr. HAFNER said that, in reply to a questionnaire, a majority of the members of the Commission had expressed themselves in favour of having a split session in 1999. He asked why that view was not reflected in the recommendations of the Planning Group.

50. The CHAIRMAN said the Planning Group had been faced with the situation that the Commission had a budget for a session of 12 weeks in 1999 provided the session was continuous. That was why it was recommending that sessions subsequent to 1999 should be split sessions of 12 weeks. The second and third recommendations of the Planning Group under section B should perhaps be considered together.

Date and place of sessions subsequent to 1999

51. Mr. ROSENSTOCK said that his understanding of what had transpired in the Planning Group was that the members who favoured a split session, and who formed the majority, had recognized the difficulty of having a split session in 1999; and that, at the same time, those members who had been hesitant on the subject had agreed

that it would be reasonable and appropriate to request a split session for the year 2000. The fact that those two decisions had been taken simultaneously and were equally firm should, in his view, be reflected in a second sentence to be added to the recommendation on the date and place of the fifty-first session, and reading: "The Planning Group further recommends that in the year 2000 the session should be 12 weeks in duration and should be split, with both parts taking place in Geneva."

52. Mr. PELLET said that he was not prepared to endorse the Planning Group's recommendations unless he received a formal assurance that at the end of the current session the Commission would take a firm decision on the form and duration of the fifty-second session. The budgetary blackmail to which the Commission was exposed year after year had to be resisted.

53. Mr. DUGARD suggested that the matter should be discussed at the second part of the session in New York, although if possible not in the final week of the session when there might be a risk of under-representation.

54. Mr. YAMADA referred to the proposed programme of work for the second part of the session in New York appended to the recommendations of the Planning Group. He wondered whether two meetings would suffice for the Drafting Committee to complete the first reading of the draft articles on prevention of transboundary damage from hazardous activities which had been referred to it.

55. Mr. SIMMA (Chairman of the Drafting Committee) agreed that it might be useful to allow the Drafting Committee more time on the draft articles on prevention of transboundary damage from hazardous activities so as to have some completed work to present to the Sixth Committee.

56. Mr. PELLET said that he had no objection to the Drafting Committee being allowed to spend more time on the topic of prevention of transboundary damage from

hazardous activities provided the additional meetings were scheduled to take place after the meetings set aside for the topic of reservations to treaties. In that connection, he pointed out that the texts referred to the Drafting Committee under the latter topic were accompanied by commentaries, which was not so far the case with the draft articles on the former.

57. The CHAIRMAN said that the proposed programme of work was purely indicative and could be adjusted. After a further brief discussion on the subject of the date, place and form of sessions subsequent to 1999, in which Mr. GALICKI and Mr. ECONOMIDES took part, he said he took it that the Commission wished to adopt the Planning Group's recommendations on the understanding that the Commission would receive some assurances on budgetary matters during the second part of the session in New York and that a decision concerning the fifty-second session would be taken, if possible, early during the second part.

58. Mr. ROSENSTOCK said that the Commission ought not to ask the budget authorities for their views but tell them what it had decided.

The recommendations on the date and place of the fifty-first session and of sessions subsequent to 1999 were adopted on the understanding outlined by the Chairman.

Closure of the first part of the session

59. After the usual exchange of courtesies, the CHAIRMAN declared the first (Geneva) part of the session closed.

The meeting rose at 12.40 p.m.
