

Document:-
A/CN.4/3014

Summary record of the 3014th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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18. The CHAIRPERSON said that, following consultations, and if he heard no objection, he would take it that Mr. Nolte would chair the Study Group on the topic "Treaties over time" and that Mr. McRae and Mr. Perera would co-chair the Study Group on the topic "The most-favoured-nation clause".

It was so decided.

The meeting rose at 10.55 a.m.

3013th MEETING

Tuesday, 2 June 2009, at 10.10 a.m.

Chairperson: Mr. Nugroho WISNUMURTI

Present: Mr. Cafilisch, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Murase, Mr. Nolte, Mr. Ojo, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Vascian-
nie, Mr. Vázquez-Bermúdez, Sir Michael Wood, Ms. Xue.

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

[Agenda item 1]

1. Mr. NOLTE (Chairperson of the Study Group on Treaties over time) announced that the Study Group would be composed of the following members: Mr. Cafilisch, Mr. Candioti, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Kolodkin, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Ojo, Mr. Pellet, Mr. Perera, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vascian-
nie, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue and Ms. Jacobsson (Rapporteur), *ex officio*.

2. Mr. McRAE (Chairperson of the Study Group on The most-favoured-nation clause) announced that the Study Group would be composed of the following members: Mr. Cafilisch, Mr. Candioti, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Hassouna, Mr. Hmoud, Mr. Kolodkin, Mr. Murase, Mr. Nolte, Mr. Pellet, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vascian-
nie, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue and Ms. Jacobsson (Rapporteur), *ex officio*.

3. Mr. CANDIOTI (Chairperson of the Working Group on shared natural resources) announced that the working group would be composed of the following members: Mr. Cafilisch, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Kolodkin, Mr. McRae, Mr. Murase, Mr. Nolte, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vascian-
nie, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue and Ms. Jacobsson (Rapporteur), *ex officio*.

The meeting rose at 10.20 a.m.

3014th MEETING

Friday, 5 June 2009, at 10.05 a.m.

Chairperson: Mr. Ernest PETRIČ

Present: Mr. Cafilisch, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Murase, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vascian-
nie, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Responsibility of international organizations (*con- tinued*)* (A/CN.4/606 and Add.1, sect. D, A/ CN.4/609, A/CN.4/610, A/CN.4/L.743 and Add.1

[Agenda item 4]

REPORT OF THE DRAFTING COMMITTEE

1. The CHAIRPERSON invited the Chairperson of the Drafting Committee to present the draft articles on responsibility of international organizations provisionally adopted by the Drafting Committee and contained in document A/CN.4/L.743 and Add.1.

2. Mr. VÁZQUEZ-BERMÚDEZ (Chairperson of the Drafting Committee) said that, at its 3009th meeting on 22 May 2009, the Commission had referred to the Drafting Committee the six new draft articles proposed by the Special Rapporteur in his seventh report, namely draft articles 15 *bis*, 19 and 61 to 64. It had also referred a proposal made by the Special Rapporteur to restructure those draft articles and to amend or revise seven draft articles which had already been provisionally adopted, in other words draft articles: 2; 4, paragraph 2; 8; 15, paragraph 2 (*b*); 18; 28, paragraph 1, and 55.

3. The Drafting Committee had completed its consideration of all the draft articles referred to it in six meetings on 25, 26 and 27 May and 2 June 2009. The structure of the draft articles and draft articles 2, 4, paragraph 2, 8, 15, paragraph 2 (*b*), 15 *bis*, 18, 19 and 55, as contained in the Drafting Committee's report, would be introduced at the current meeting, while the Drafting Committee's conclusions on the other draft articles would be presented during the second part of the session.

4. The Commission, meeting in plenary session, had agreed to the restructuring proposed by the Special Rapporteur in his seventh report. The Drafting Committee had endorsed that proposal on the understanding that, once it had finished its consideration of the topic, the general structure and position of the draft articles could be reviewed in order to ensure the consistency of the final text to be adopted at first reading.

* Resumed from the 3009th meeting.

5. As was clear from the report, the draft articles had been restructured with the result that draft articles 1 and 2 formed a new Part One entitled “Introduction”. The title of the previous Part One had become that of the current Part Two, i.e. “The internationally wrongful act of an international organization” and the title of the former Part Two had become that of Part Three. A new Chapter I entitled “General principles” had been introduced into the new Part Two. Chapter X had been moved and had become Part Five and the general provisions had been grouped in a final Part Six.
6. Draft article 2, entitled “Use of terms”, as provisionally adopted by the Commission, dealt with the term “international organization” solely for the purposes of the draft articles. The Special Rapporteur’s proposal to move draft article 4, paragraph 4, containing a definition of the rules of the organization, to draft article 2 had been accepted by the Commission meeting in plenary session. At the beginning of the seventh report, the proposal had been made also to move draft article 4, paragraph 2, concerning the term “agent”, to draft article 2, so as to offer a comprehensive definition of terms in the introductory part of the text.
7. Since no objection had been raised to the proposal to move the definition of the rules of the organization from draft article 4 to draft article 2, the Drafting Committee had reshaped that provision accordingly. It had also decided to turn the phrase “For the purposes of the present draft articles” into the *chapeau* of the various subparagraphs that defined the meaning of terms in that context. Furthermore, the words “the term” at the beginning of each subparagraph had been deemed superfluous in the English version.
8. In addition to those drafting suggestions, the Drafting Committee had considered the possibility of improving the wording of the new subparagraph (b). Some members had maintained that a distinction had to be drawn between purely internal rules and those defining the relationship between an international organization and other persons or entities. It had also been suggested that, for the purposes of the draft articles, the rules of an organization should be defined by reference to their binding character. Some members had feared that the phrase “in particular” might introduce an element of uncertainty.
9. As the Special Rapporteur had emphasized, the definition currently contained in draft article 2, subparagraph (b) closely resembled the wording of article 2, paragraph 1 (j) of the 1986 Vienna Convention, with the addition of “other acts” after the reference to the decisions and resolutions which an organization could adopt. The phrase “in particular”, which already appeared in the 1986 Vienna Convention offered the requisite flexibility and should be retained, as the rules of the organization also covered, for instance, an organization’s agreements with the host State.
10. Some members had contended that the definition of the rules of the organization contained in article 1, paragraph 1 (34) of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character was more appropriate, because it spoke of “relevant decisions and resolutions”. That wording did not, however, capture the scope needed for the draft articles which went beyond what was required for the representation of States. That being so, the Drafting Committee had not modified the substance of the provision and had made only a few drafting changes by replacing “taken” with “adopted” in draft article 2 (b) and altering the punctuation.
11. The second proposal made in respect of draft article 2 had been to turn the provision in draft article 4, paragraph 2, referring to the term “agent”, into a new subparagraph (c). The Commission had already foreseen such a possibility by indicating in a footnote to draft article 4 that all definitions of terms could be placed in draft article 2. The Drafting Committee had opted for that solution after considering some other possibilities. While it was true that the term “agent” was of particular significance in the chapter dealing with attribution of conduct to an international organization, it had been deemed preferable to place all the terms used for the purposes of the draft articles in a single article in the introduction. The definition of the term “agent” had therefore been moved and had become subparagraph (c) of draft article 2, for it was more logical to define the terms “international organization” and “rules of the organization” before explaining what was to be understood by “agent” of the organization.
12. The Drafting Committee had then studied the provision’s wording. In his seventh report, the Special Rapporteur had proposed that a phrase taken from the advisory opinion of the ICJ on *Reparation for Injuries*, namely “when they have been charged by an organ of the organization with carrying out, or helping to carry out, one of its functions” should be inserted after “officials and other persons or entities through whom the organization acts”. Although that proposal had met with some approval in plenary session, some members had wished either to keep the previous wording, or to delete the phrase “through whom the organization acts”, if the new text were adopted.
13. That debate had been amply reflected in the opinions voiced by the members of the Drafting Committee. As the Special Rapporteur and some members of the Committee had acknowledged, some international organizations had expressed concerns about the exact scope of that provision, which did not seem to specifically address the issue of outsourcing the exercise of an organization’s functions. The proposal to add that phrase was intended to meet that concern. Other members of the Drafting Committee had nevertheless contended that the proposed phrase might give the misleading impression that the agent would have to be charged by the organization, a condition which would conflict with draft article 6. Several members had also been of the opinion that the retention of the phrase “through whom the organization acts” combined with the addition of the proposed phrase might be interpreted as an unnecessary limitation on the meaning of the term “agent”.
14. After an extensive debate, the Drafting Committee had decided to retain the phrase “through whom the organization acts” on the understanding that the commentary would indicate that, in most cases, the agent would have been charged by the organization to carry out one of its functions. That basic condition would not conflict with

the case, for which provision was made in draft article 6, of the conduct of an international organization's agent being attributed to it, even if that conduct exceeded the agent's authority.

15. The use of the verb "includes" had also been questioned. In the opinion of some members of the Drafting Committee, since subparagraph (c) encompassed all persons or entities who or which should be considered to be agents of the organization, the verb "means" would be more appropriate. In the end, the verb "includes" had been retained in order to meet the concern expressed by some international organizations which had argued that no undue restriction should be placed on the attribution of conduct, especially since the draft articles contained no provision comparable to article 8 of the draft articles on responsibility of States for internationally wrongful acts,¹⁵⁸ which dealt with the conduct of a person or group of persons acting under the direction or control of a State. The commentary would supply the necessary explanations by referring to the relevant provisions of the draft articles on State responsibility.

16. Draft article 4, entitled "General rule on attribution of conduct to an international organization" was also reproduced in document A/CN.4/743, although it had not been debated separately in the Drafting Committee. It had been thought necessary to submit to Commission members the new version of that draft article resulting from the transfer of the definition of "rules of the organization" and "agent" to draft article 2, subparagraphs (b) and (c). The commentaries to draft articles 2 and 4 would have to be adjusted to reflect those modifications.

17. In his seventh report, the Special Rapporteur had proposed the redrafting of draft article 8, paragraph 2, in order to make it clearer that, apart from some exceptions, the rules of an organization could create international obligations, a breach of which would come within the ambit of the draft articles. While that proposal had attracted some support in plenary session, it had also met with some criticism, insofar as some members had queried the use of the expression "in principle", while others had called for the deletion of paragraph 2, or the insertion of appropriate language in paragraph 1.

18. The Drafting Committee had not questioned the need for an express reference to breach of an international obligation deriving from an organization's rules. It had tried to find the best way of expressing that possibility without giving the impression that all obligations created by a rule of an organization would necessarily be international in character for the purposes of the draft articles. In the end, it had been decided to combine the current wording of draft article 8, paragraph 2, with that proposed by the Special Rapporteur. It had not kept the expression "in principle", but the verb "includes" had been deemed a suitable means of clarifying the relationship between the provision's two paragraphs. What was more important, the Drafting Committee had inserted the phrase "that may arise" between "international obligation" and "under the rules of the organization", in order to introduce a constructive ambiguity with regard to the creation of international

obligations through the rules of an international organization. Lastly, the term "international obligation" had been used in preference to "obligation under international law" for the sake of consistency throughout the text.

19. The Special Rapporteur had proposed that in draft article 15, paragraph 2 (b), the expression "in reliance on" should be replaced with "as a result of" in order to underscore the role that a recommendation or authorization would play in the commission of a wrongful act. Several suggestions had been put forward, both in plenary session and in the Drafting Committee, to express that linkage most clearly. Expressions such as "pursuant to", or "on the basis of" had been deemed too weak to indicate that the State or organization in question must have acted in response to an authorization or recommendation. On the other hand, it would be going too far to state that the act in question would not have been committed without that authorization or recommendation, thus making it the sole cause of the wrongful conduct. More generally, it had been held that the obligation to identify the specific cause of a given conduct would impose too heavy a burden and would be too difficult to apply in practice. The expression "because of" had ultimately been chosen, because it struck the right balance between the need for a more restrictive approach than that encapsulated in the words "in reliance on" and the need to preserve an effective, practical criterion.

20. Draft article 15 *bis* had been presented by the Special Rapporteur in an attempt to fill a gap and, in instances involving international organizations which were members of other organizations, to address a situation comparable with that contemplated in draft articles 28 and 29 in the case of States which were members of an international organization. As that proposal had been well received in plenary session, the Drafting Committee had simply considered the best way of conveying the exceptional nature of that situation, without implying that, if the conditions were met, responsibility could be avoided.

21. Some members of the Drafting Committee had expressed a preference for the text proposed by the Special Rapporteur, which stipulated that an international organization's responsibility "may arise" under the conditions set out in draft articles 28 and 29. In their view, that wording would have better reflected the rather improbable nature of such a situation. The Drafting Committee had, however, concluded that the formulation could be misleading because international responsibility necessarily arose when the conditions mentioned in the draft article were met. The adverb "also" had been added before "arise". Read in conjunction with the phrase "without prejudice to" at the beginning of the draft article, the phrase "also arises" was intended to convey the idea that the occurrence of responsibility contemplated in that draft article was additional to the instances listed in draft articles 12 to 15. Lastly, the Drafting Committee had considered that a simple title such as "Responsibility of an international organization member of another international organization", would be appropriate for draft article 15 *bis*.

22. Unlike the previous provision, draft article 18 had triggered an extensive debate in the Drafting Committee, something which was hardly surprising in view of the debate in plenary session surrounding the issue of

¹⁵⁸ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 47-49.

self-defence. At the end of that discussion, the Special Rapporteur had withdrawn his initial proposal to delete draft article 18 and had proposed that the Drafting Committee should review the text.

23. Members of the Drafting Committee had expressed a variety of views. Some had contended that the term “self-defence” was inappropriate, because it would extend to other actors a right reserved for States and that the draft article should either refer to the notion of “self-protection” or should simply state that, if such a right did exist for international organizations, the wrongfulness of an act done in self-defence would be precluded. Others had taken the view that self-defence was an inherent right of every subject of international law and that, for the purposes of the draft articles, it was unnecessary to detail the content and scope of that right and that it was sufficient to recognize its effect on the wrongfulness of an international organization’s act.

24. The Drafting Committee had explored various options in an effort to reconcile those views. The insertion of a “without prejudice” clause, for example, had been seen as a way of still making it possible for an international organization to engage in self-defence, given the legal uncertainties surrounding that issue. It had, however, been considered possible to draft a provision stating more directly that the wrongfulness of an international organization’s act would be precluded if that act had been committed in exercise of the right of self-defence. In that regard, the Drafting Committee had given thorough consideration to the proposal made in plenary session to draw an analogy between an act of an international organization and a lawful measure of self-defence adopted by a State in accordance with the Charter of the United Nations. The fact that the principle of self-defence as a reaction to armed attack had been evolved for States was no reason to deny international organizations the same right. But since it was awkward simply to rely on Article 51 of the Charter of the United Nations when international organizations were concerned, the Drafting Committee was proposing a draft article which would refer *mutatis mutandis* to the conditions for the exercise of the right of self-defence laid down in the Charter of the United Nations. That provision had been well received by some members, who thought that the limitations prescribed in Article 51 could be regarded as part of general international law and therefore applied, as appropriate, to international organizations. Other members of the Drafting Committee had maintained that the drawing of an analogy between a right of international organizations and that of States under the Charter of the United Nations would unnecessarily create problems of interpretation.

25. More generally, two main reasons had prevented the Drafting Committee from including an express reference to the Charter of the United Nations in draft article 18. On the one hand, some members were reluctant to establish any kind of parallel between States and international organizations in respect of the exercise of self-defence because, in their opinion, the rights entailed were substantially different and if it was necessary to allow the exercise of self-defence by agents of the organization, that right was limited in scope and could not be equated with that of States. On the other hand, most members of the Drafting Committee thought that there was no need to

specify the conditions for the exercise of self-defence by international organizations in the text of draft article 18, as the issue could be dealt with in the commentary. In the text itself it would be sufficient to acknowledge the effect that the exercise of self-defence would have on the wrongfulness of an international organization’s act.

26. That being so, the Drafting Committee had ultimately decided to mention, in draft article 18, a lawful measure of self-defence that an international organization might take “under international law”. Although the adjective “lawful” might appear redundant, it was intended as an allusion to the conditions surrounding the exercise of self-defence by an international organization. Finally, the phrase “if and to the extent that” had been inserted to convey the idea held by most members of the Committee that international organizations also had a right of self-defence, albeit not in the same way as States.

27. Moving on to draft article 19 (Countermeasures), he recalled that during the debate in plenary session, several members had wondered whether it was enough, in paragraph 1, to speak of “lawful” countermeasures on the part of international organizations. The Special Rapporteur had therefore submitted to the Drafting Committee a revised version of that paragraph which incorporated the suggestions made on that occasion and which referred to the substantive and procedural conditions required under international law for the taking of countermeasures, including those set forth in Chapter II of Part Four on countermeasures directed against another international organization. The Special Rapporteur had explained that it was not sufficient to refer only to Chapter II, for it dealt solely with countermeasures against international organizations, whereas draft article 19 also covered countermeasures taken by an international organization against a State. The Drafting Committee had decided to retain the reference to Chapter II of Part Four. The commentary would make it clear that, as far as countermeasures taken by an international organization against a State were concerned, the articles on State responsibility applied by analogy.

28. Draft article 19, paragraph 2, turned on the more sensitive issue of an international organization’s use of countermeasures against one of its members. In his seventh report, the Special Rapporteur had proposed that such recourse should be made subject to the failure of the organization’s rules to provide for reasonable means of securing compliance with the obligations of cessation and reparation. The Drafting Committee had carefully considered the amendments proposed during the debate in plenary session, especially those pertaining to the term “reasonable means”. Some members would have preferred to talk about “procedures”, but in the end it had been decided to keep the word “means” in the wider sense, since it was more suited to a provision which sought to restrict an international organization’s possible recourse to countermeasures against its members.

29. The qualification to be applied to those means had likewise been discussed at length. Some members had contended that demanding that the means used should be “reasonable”, “appropriate” or “effective” would not prevent an organization from always finding some argument justifying recourse to countermeasures. It would be

sufficient to say that, if other means were available, countermeasures would be prohibited. But other members of the Drafting Committee had taken the view that a qualifier was necessary, especially if the reference to the rules of the organization were removed from the provision. They had maintained that an element of comparison between means and countermeasures was necessary, if only in order to avoid the paradoxical case where an organization would be entitled to take more drastic measures than countermeasures, such as expulsion or suspension. The qualifier “effective” had finally been rejected as setting too high a threshold and making the use of countermeasures too attractive. Similarly, the adjective “lawful” had been deemed too restrictive. On the other hand, the expression “appropriate means” seemed to convey the indispensable element of lawfulness which could be emphasized in the commentary, while allowing some flexibility in the choice of the most suitable means for halting a violation and obtaining reparation. That was therefore the term chosen.

30. On the basis of a revised version proposed by the Special Rapporteur, the Drafting Committee had decided to introduce a double negative in paragraph 2—“[a]n international organization may not take countermeasures ... unless” in order to bring out the exceptional nature of any recourse by an international organization to countermeasures against its members. In subparagraph (a), the phrase “not inconsistent with the rules of the organization” had been retained in order to ensure that an organization did not depart from its rules when taking countermeasures. In subparagraph (b), the Drafting Committee had kept the expression “appropriate means ... for otherwise inducing compliance with the obligations of the responsible State or international organization” in order to suggest that another solution might be possible if means were unavailable, but without creating an element of comparison with countermeasures. The word “inducing” had been preferred to “ensuring compliance” so as not to make the use of countermeasures too easy.

31. Lastly draft article 55 (countermeasures by members of an international organization) had been brought into line with draft article 19, paragraph 2. The commentary would explain that the “countermeasures” to which reference was made in common subparagraph (a) covered both countermeasures in general and those actually taken in a given situation. The Drafting Committee hoped that the Commission meeting in plenary would adopt the draft articles which had been presented to it.

32. The Chairperson thanked the Chairperson of the Drafting Committee for his presentation and invited the members of the Commission to proceed with the adoption of the draft articles contained in document A/CN.4/L.743.

Draft article 2 (*Use of terms*)

Draft article 2 was adopted.

Draft article 4 (*General rule on attribution of conduct to an international organization*)

Draft article 4 was adopted.

Draft article 8 (*Existence of a breach of an international obligation*)

Draft article 8 was adopted.

Draft article 15, paragraph 2 (b) (*Decisions, recommendations and authorizations addressed to member States and international organizations*)

Draft article 15, paragraph 2 (b) was adopted.

Draft article 15 bis (*Responsibility of an international organization member of another international organization*)

Draft article 15 bis was adopted.

Draft article 18 (*Self-defence*)

Draft article 18 was adopted.

Draft article 19 (*Countermeasures*)

Draft article 19 was adopted.

Draft article 55 (*Countermeasures by members of an international organization*)

Draft article 55 was adopted.

All the draft articles contained in document A/CN.4/L.743 were adopted.

33. The Chairperson invited the members of the Commission to proceed with the adoption of the draft articles contained in document A/CN.4/L.725/Add.1,¹⁵⁹ with the exception of draft article 55, the revised version of which had just been adopted. At the end of its previous session, the Commission had taken note of those draft articles, but had not formally adopted them,¹⁶⁰ because the Special Rapporteur had not had enough time to draft the commentaries thereto.

Draft article 54 [52] (*Object and limits of countermeasures*)

Draft article 54 [52] was adopted.

Draft article 56 [53] (*Obligations not affected by countermeasures*)

Draft article 56 [53] was adopted.

Draft article 57 [54] (*Proportionality*)

Draft article 57 [54] was adopted.

Draft article 58 [55] (*Conditions relating to resort to countermeasures*)

Draft article 58 [55] was adopted.

Draft article 59 [56] (*Termination of countermeasures*)

Draft article 59 [56] was adopted.

Draft article 60 [57] (*Measures taken by an entity other than an injured State or international organization*)

Draft article 60 [57] was adopted.

All the draft articles contained in document A/CN.4/L.725/Add.1, with the exception of draft article 55 [52 bis], were adopted.

¹⁵⁹ Mimeographed; available on the Commission’s website, documents of the sixtieth session.

¹⁶⁰ *Yearbook ... 2008*, vol. I, 2989th meeting, paras. 2–20.

Reservations to treaties (*continued*)* (A/CN.4/606 and Add.1, sect. C, A/CN.4/614 and Add.1–2, A/CN.4/616, A/CN.4/L.744 and Corr.1–2 and Add.1)

[Agenda item 3]

REPORT OF THE DRAFTING COMMITTEE

34. The CHAIRPERSON invited the Chairperson of the Drafting Committee to introduce the Committee's report on reservations to treaties as contained in document A/CN.4/L.744.

35. Mr. VÁZQUEZ-BERMÚDEZ (Chairperson of the Drafting Committee) recalled that at its 2891st meeting on 11 July 2006, the Commission had referred draft guidelines 3.2, 3.2.1 to 3.2.4, 3.3 and 3.3.1 to the Drafting Committee. At its 2978th meeting on 15 July 2008, it had referred draft guidelines 2.9.1 to 2.9.10 to the Committee. Lastly, at its 3012th meeting on 29 May 2009, it had referred draft guidelines 2.4.0 and 2.4.3 *bis* to the Committee. The Committee had managed to complete work on 18 draft guidelines, including a new draft guideline 3.2.5, and to adopt provisionally the titles of section 2.8 (Formulation of acceptances of reservations) and 2.9 (Formulation of reactions to interpretative declarations). However, it had not been able to complete its work on draft guideline 3.3 and had yet to consider draft guideline 3.3.1. Of the 18 draft guidelines currently before the Commission, the first 2 dealt with the form and communication of interpretative declarations; 10 others related to reactions to interpretative declarations; and the remaining 6 concerned the assessment of the validity of reservations.

36. Following a suggestion made in the plenary Commission, draft guideline 2.4.0 was now entitled "Form of interpretative declarations"; the title no longer referred to written form, since there was no requirement that interpretative declarations be formulated in writing. It would be explained in the commentary that interpretative declarations formulated orally could also produce legal effects. The words in the text "whenever possible" had been replaced by "preferably" in order to emphasize that the guideline was in the nature of a recommendation, while also recognizing that in certain cases, such as in the framework of an international conference, it might not be appropriate for a State or international organization to make an interpretative declaration in writing.

37. Draft guideline 2.4.3 *bis* (Communication of interpretative declarations) provided for the application, *mutatis mutandis*, of several draft guidelines relating to reservations. The words "whenever possible" had been deleted, and the scope of the draft guideline had been limited to interpretative declarations formulated in writing. After careful consideration, the Drafting Committee had finally decided against the suggestion made in the plenary Commission to add a reference to guideline 2.1.8, which recommended the course of action to be followed when the depositary of a reservation considered it to be manifestly invalid. The issue of the validity of an interpretative declaration could arise in the rare cases in which a treaty

prohibited or restricted the formulation of interpretative declarations in general or of certain types of interpretative declarations. Some members had been of the view that the same course of action as that envisaged for manifestly invalid reservations should apply to invalid interpretative declarations, and that a failure to provide for that situation might even encourage the formulation of such declarations; however, other members had pointed out that an invalid interpretative declaration would be truly exceptional and that it was therefore unnecessary to transpose to interpretative declarations the content of a draft guideline which, even in the case of reservations, pertained to the progressive development of international law. A detailed explanation of the different positions would be provided in the commentary. Furthermore, bearing in mind that the Commission had decided during the current session against the elaboration of a draft guideline dealing with the statement of reasons for interpretative declarations, the Drafting Committee had decided not to follow a suggestion made in the plenary Commission to include a reference to draft guideline 2.1.9 on the statement of reasons for reservations. Draft guidelines 2.4.0 and 2.4.3 *bis* belong under section 2.4 of the Guide to Practice (Procedure for interpretative declarations), which would be renumbered accordingly.

38. Turning to the 10 draft guidelines dealing with reactions to interpretative declarations, he said that, since draft guideline 2.9.1 (Approval of an interpretative declaration) had been well received by the plenary Commission, the Drafting Committee had retained the formulation proposed by the Special Rapporteur, with two minor editorial changes, namely, the replacement of the phrase "in response to" by the phrase "in reaction to" in the English version and, towards the end of the text, the replacement of the word "proposed" by the word "formulated", which was thought to be more neutral. Several members of the Drafting Committee had emphasized that, in practice, reactions to interpretative declarations often presented a mixed character, in that they might contain elements of approval and elements of opposition. However, after due consideration, the Drafting Committee came to the conclusion that it was not appropriate to reflect the latter aspect in the text of a guideline that was simply intended to define "approval". It was agreed, however, that the point would be explained in the commentary to that draft guideline and also in the commentary to the draft guideline defining "opposition" to an interpretative declaration. Moreover, since the draft guideline was in the nature of a definition, the Drafting Committee did not think it was the appropriate place to address the question of the possible effects of the approval of an interpretative declaration.

39. Since draft guideline 2.9.2 (Opposition to an interpretative declaration) had also been well received by the plenary Commission, the formulation retained by the Drafting Committee was largely based on the text proposed by the Special Rapporteur. A few minor editorial changes had been made: as in draft guideline 2.9.1, the phrase "in response to" had been replaced by the phrase "in reaction to" in the English version and the word "proposed" had been replaced by the word "formulated". However, the Committee had also introduced some substantive changes in the text of the draft guideline.

* Resumed from the 3012th meeting.

Following a suggestion made by some members in the plenary debate, the Committee had decided to delete the words “with a view to excluding or limiting its effects” at the end of the text originally proposed by the Special Rapporteur. The main reason was that the effects, if any, of an interpretative declaration and of opposition thereto were yet to be determined and should not be alluded to in a guideline which only purported to define the notion of “opposition” to an interpretative declaration. It had also been thought that it was not appropriate to use a wording similar to that of draft guideline 2.6.1, which defined objections to reservations. Moreover, some had argued that the question of the motives for an opposition was too subjective to serve as an element of a definition of the notion of “opposition”. Lastly, the final phrase of the draft guideline had been modified in order to better convey the idea that the rejection of an interpretative declaration could also occur through the formulation of an alternative interpretation. The Drafting Committee had discussed whether the adjectives “incompatible” or “inconsistent” should be used, before finally opting for “alternative”, which was considered more neutral. Several members had considered that a requirement that the interpretation formulated must be “incompatible” or “inconsistent” with the interpretation contained in the interpretative declaration would be too strict and could create certain difficulties.

40. The title of draft guideline 2.9.3 had been changed to read “Recharacterization of an interpretative declaration”. The Drafting Committee had decided that the word “recharacterization” was more appropriate in English than the word “reclassification”. The title of the draft guideline remained unchanged in French. During the plenary debate in 2008, some members had been of the view that, since the recharacterization of an interpretative declaration as a reservation was to be regarded as a form of opposition to that declaration, it would be preferable to merge draft guidelines 2.9.2 and 2.9.3. However, the majority of members who had spoken in the plenary Commission had thought that it was better to have a separate draft guideline on the recharacterization of an interpretative declaration. The Drafting Committee decided to follow the majority view and had therefore retained a separate draft guideline on recharacterization. It had considered that the recharacterization of an interpretative declaration as a reservation was an issue that merited separate treatment, even if in most cases such a recharacterization would also convey an opposition to the interpretative declaration.

41. The Drafting Committee had made a number of changes to draft guideline 2.9.3. In order to harmonize it with the text and structure of draft guidelines 2.9.1 and 2.9.2, and to reflect the fact that an attempt to recharacterize an interpretative declaration was not in itself sufficient to change the nature of the declaration, the words “of an interpretative declaration” had been inserted in the first line after the word “recharacterization” and the qualifier “interpretative” had been inserted before the word “declaration” in the second line. The Drafting Committee had also thought that the last part of the first paragraph was somewhat redundant and could be simplified. The phrase “purports to regard the declaration as a reservation and to treat it as such” was replaced by the phrase “treats the declaration as a reservation”.

42. Although a suggestion had been made in the plenary Commission to delete the second paragraph of the draft guideline, the Drafting Committee had considered the paragraph useful and had decided to retain it, redrafting it slightly to avoid repetition of the word “recharacterization”. Moreover, it had changed the words in brackets “[take into account]” to “should take into account” to reflect the fact that the paragraph constituted a recommendation, and it had deleted the verb “[apply]” for the same reason. The Drafting Committee had also proposed that the commentary should clearly indicate that the recognition of the right of a State or an international organization to recharacterize an interpretative declaration as a reservation was without prejudice to whether such a recharacterization was legally correct.

43. Draft guideline 2.9.4 (Freedom to formulate an approval, opposition or recharacterization) had been well received in the plenary Commission; therefore the Drafting Committee had retained the text proposed by the Special Rapporteur with two minor editorial changes, namely, the replacement of the word “reclassification” by the word “recharacterization” in the English version and the replacement of the word “protest” by the word “opposition” in the title.

44. Draft guideline 2.9.5, now entitled “Written form of approval, opposition and recharacterization”, which had also been well received by the plenary Commission, was intended to mirror draft guideline 2.4.0, which stated that interpretative declarations should preferably be formulated in writing. The Drafting Committee had adopted the text proposed by the Special Rapporteur with two changes. In the English version, the word “shall” had been replaced by “should” in order to align it with the French version, which clearly indicated that the draft guideline was in the nature of a recommendation. In the same spirit, the words “whenever possible” had been added. The commentary would clarify that the adoption of the written form was a matter of choice on the part of the State or international organization concerned rather than a matter of capability.

45. Since draft guideline 2.9.6, now entitled “Statement of reasons for approval, opposition and recharacterization”, had also been well received in the plenary Commission, the Drafting Committee had adopted the text proposed by the Special Rapporteur with minor editorial changes. In the English version, the phrase “whenever possible” had been replaced by the phrase “to the extent possible” in order to convey more clearly the idea that States and international organizations were encouraged to state the reasons for their reactions as extensively as possible. The qualifier had been placed after the word “should” in order to mirror the structure of draft guideline 2.9.5. The Drafting Committee had discussed whether the draft guideline should also apply to approval of an interpretative declaration. The point had been made by some members that it might not be easy to understand the reasons why a State or an international organization wishing to approve an interpretative declaration should state the reasons for its approval. It had also been pointed out that the reasons provided in support of an approval could themselves raise questions, thus creating confusion. In the end, the Drafting Committee had decided that it was preferable not to exclude approval from the scope of

the draft guideline, bearing in mind that it was purely in the nature of a recommendation, as shown by the flexible wording employed.

46. It had been agreed that the commentary would make it clear that the statement of reasons for approval, opposition or recharacterization was optional. Moreover, the following explanations would be given with regard to approval of an interpretative declaration: (a) the question of the statement of reasons arose in different terms than in the case of opposition; (b) the statement of reasons for approval could be of interest in the context of a dialogue relating to the interpretation of a treaty; (c) in the rare instances in which approval of an interpretative declaration had been expressed, it happened that the reasons for approval had been stated.

47. Draft guideline 2.9.7, now entitled “Formulation and communication of an approval, opposition or recharacterization”, which concerned the modalities for formulating and communicating approval, opposition and recharacterization of an interpretative declaration, stated that certain draft guidelines relating to reservations were applicable *mutatis mutandis*. Since the draft guideline had been well received in the plenary Commission, the Drafting Committee had adopted the text proposed by the Special Rapporteur, merely replacing the term “reclassification” by “recharacterization” in the English version. The commentary would explain that the reference to draft guideline 2.1.7, which provided that the depositary should examine whether a reservation was in due and proper form, was justified by the existence of some treaties prohibiting or restricting the formulation of certain interpretative declarations.

48. The Drafting Committee had considered draft guideline 2.9.8 (Non-presumption of approval or opposition) in conjunction with draft guideline 2.9.9. It had retained the text and title of the draft guideline as proposed by the Special Rapporteur with some minor editorial changes and had added a new second paragraph. The new paragraph concerned the exceptional cases in which approval of an interpretative declaration or opposition thereto might be inferred from the conduct of the States or international organizations concerned, taking into account all relevant circumstances. The reference to draft guidelines 2.9.1 and 2.9.2 was intended to clarify that the second paragraph of draft guideline 2.9.8 dealt with exceptional cases in which approval or opposition not expressed by means of a unilateral statement pursuant to guidelines 2.9.1 and 2.9.2 might be inferred from certain conduct. In the draft guidelines originally proposed by the Special Rapporteur, the issue of conduct in reaction to an interpretative declaration was addressed only in the context of draft guideline 2.9.9, dealing with silence in response to an interpretative declaration, and only in relation to approval of such a declaration. The Drafting Committee had decided, however, that the issue of “conduct” deserved a more general treatment, in relation to both approval of and opposition to an interpretative declaration.

49. With regard to draft guideline 2.9.9, now entitled “Silence with respect to an interpretative declaration”, a suggestion had been made in the plenary debate in 2008 that the guideline should be deleted, mainly because it

appeared to contradict the absence of presumption of approval or opposition as stated in draft guideline 2.9.8. However, a majority of Commission members had been in favour of retaining the provision. After due consideration, the Drafting Committee had concluded that it would be useful to include it, provided that it was carefully drafted in order to circumscribe properly the role that silence could play in determining whether an interpretative declaration had been approved. The first paragraph, as adopted by the Drafting Committee, was a more concise version of the text proposed by the Special Rapporteur. The term “consent” had been replaced by the term “approval” for the sake of consistency with the other draft guidelines.

50. The Drafting Committee had made several changes to the second paragraph. In particular it had preferred the word “approved” instead of “acquiesced” in order to align the text with that of the other draft guidelines and to avoid the ambiguities that might surround the notion of acquiescence. At the beginning of the paragraph, the phrase “in certain specific circumstances” had been replaced by “in exceptional cases”. The reason for the change was that the Drafting Committee had not considered it appropriate to refer to “specific circumstances” that could not be easily defined and had found it preferable to use a wording that emphasized that cases where silence would be relevant to determining whether an interpretative declaration had been approved occurred infrequently. Furthermore, a discussion had taken place in the Drafting Committee on the relation between silence and conduct and on the way to reflect that relation in the text of the second paragraph. The formulation finally retained was intended to convey the idea that, in exceptional cases, silence as an element of conduct might be relevant in determining whether the State or international organization concerned had approved an interpretative declaration, “taking account of the circumstances”. That qualifier had been considered more accurate than the general formula “as the case may be” contained in the text originally proposed by the Special Rapporteur.

51. The Drafting Committee had decided to leave draft guideline 2.9.10 (Reactions to conditional interpretative declarations) in square brackets pending a decision by the Commission on the desirability of devoting specific provisions to conditional interpretative declarations. The reference to draft guideline 2.6 had been replaced by a reference to draft guideline 2.6.1, since 2.6 was the number of the title of the corresponding section.

52. Turning to the set of draft guidelines dealing with the assessment of the validity of reservations, he recalled that draft guidelines 3.2 to 3.2.4 had been referred to the Drafting Committee in 2006.¹⁶¹ Draft guideline 3.2 was now entitled “Assessment of the validity of reservations”. The Drafting Committee had had a long discussion on the purpose and meaning of the draft guideline and on the formulation that would best reflect its general and introductory character. Several changes had been made to the original text. In the *chapeau*, the verb “rule on” had been replaced by the verb “assess”, which had been

¹⁶¹ *Yearbook ... 2006*, vol. II (Part Two), p. 134, para. 103, and for the presentation of these draft guidelines by the Special Rapporteur and the summary of the debate, paras. 109–113 and p. 136, paras. 130–136, respectively.

deemed more appropriate since the pronouncements that could be made concerning the validity of a reservation by the entities and bodies listed in the draft guideline were not necessarily binding. The English wording of the *chapeau* was thus aligned with the French word “*apprécier*” and with the title of the draft guideline, where the word “assessment” was used. The commentary would indicate that the verb “assess” had been chosen because of its neutral character: while it alluded to the existence of an institutional basis for the pronouncements made by the bodies referred to in the draft guideline, the word did not prejudice the legal effect that such pronouncements might have. The replacement of the words “are competent to rule on” by the words “may assess, within their respective competences” had been intended to reflect the fact that the ability of certain bodies, in particular, dispute settlement bodies and treaty monitoring bodies, to assess the validity of a reservation was neither automatic nor unlimited, but depended on the extent of the competences conferred upon such bodies.

53. Under the first bullet point, the word “other” had been deleted in order to reflect the fact that, under certain circumstances, the judicial authorities of the reserving State might be competent to assess the validity of the reservation. However, taking into account the views expressed by the majority of members during the plenary debate in 2006, the Drafting Committee had decided to delete the reference to domestic courts, which appeared in square brackets in the original text, and had agreed that the possibility that domestic courts might, in certain cases as provided for by domestic law, be competent to assess the validity of a reservation would be referred to in the commentary. Under the second bullet point, which referred to dispute settlement bodies, the words “that may be competent to interpret or apply the treaty” had been deleted, because they had been considered to be unnecessary in the light of the addition, in the *chapeau*, of the words “within their respective competences”. The commentary would underline the role that judicial bodies might play in the assessment of the validity of reservations and would indicate that the case of dispute settlement bodies competent to adopt binding decisions was specifically addressed in draft guideline 3.2.5. Under the third bullet point, which referred to treaty monitoring bodies, the phrase “that may be established by the treaty” had been deleted in order to cover also monitoring bodies established subsequently to the adoption of a treaty but within its framework, such as the Committee on Economic, Social and Cultural Rights. That point would be clarified in the commentary. A number of issues relating specifically to the assessment of reservations by treaty monitoring bodies were addressed in draft guidelines 3.2.1 to 3.2.4.

54. Draft guideline 3.2.1 (now entitled “Competence of the treaty monitoring bodies to assess the validity of reservations”) had elicited very few comments during the plenary debate in 2006. For the reasons mentioned above, the words “established by the treaty” had been deleted from the title. The first paragraph, which provided that a treaty monitoring body might, for the purpose of discharging the functions entrusted to it, assess the validity of reservations, was a simplified version of the text initially proposed by the Special Rapporteur, with the replacement of the words “shall be competent to ... assess” by the words

“may ... assess”. The second paragraph, which circumscribed the legal effect of an assessment made by a treaty monitoring body regarding the validity of a reservation, was also based on the text proposed by the Special Rapporteur. It reflected paragraph 8 of the preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties, adopted by the Commission at its forty-ninth session in 1997.¹⁶² In the English version, the words “findings made” had been replaced by “conclusions formulated”, in order to restore consistency with the neutral formulation in the French text, which was clearly without prejudice to the question of any legal effect that might be attached to the conclusions of a treaty monitoring body regarding the validity of reservations. In the English text, the term “legal force” was replaced by “legal effect” (“*valeur juridique*”), and the commentary would explain what was meant in the context. Lastly, towards the end of the paragraph, the adjective “general” had been deleted in order to refer to the performance by treaty monitoring bodies of all the functions relating to their monitoring role, including the examination of individual communications.

55. Draft guideline 3.2.2, now entitled “Specification of the competence of treaty monitoring bodies to assess the validity of reservations”, had been inspired by paragraph 7 of the preliminary conclusions adopted by the Commission in 1997. It encouraged States, when providing bodies with competence to monitor the application of a treaty, to specify, where appropriate, the nature and the limits of the competence of such bodies to assess the validity of reservations. The first sentence had been reworked in order to avoid conveying the false impression that the draft guideline purported to recommend the establishment of treaty monitoring bodies. In addition, in order to make it clear that the draft guideline was purely in the nature of a recommendation, the placement of the words “where appropriate” had been shifted so that the qualifier applied to the recommendation as a whole. The second sentence of the draft guideline concerned those monitoring bodies that already existed. The text proposed by the Special Rapporteur envisaged the adoption of protocols in order to specify the competence of such bodies to assess the validity of reservations. The Drafting Committee had preferred a more general formulation, leaving open the question of the types of measures (protocols, amendments to existing treaties and so forth) that could be adopted to that end.

56. The title of draft guideline 3.2.3 (Cooperation of States and international organizations with monitoring bodies) was unchanged. It was inspired by paragraph 9 of the preliminary conclusions adopted by the Commission in 1997. The Drafting Committee had had an extensive discussion on the scope and formulation of the draft guideline and had decided that it would be better that the draft guideline deal only with treaty monitoring bodies, which were not vested with the power to adopt binding decisions, and that a separate draft guideline should be devoted to bodies that did possess that power, such as regional human rights courts. Consequently, the second sentence of the text proposed by the Special Rapporteur had been deleted. The wording of draft guideline 3.2.3

¹⁶² *Yearbook ... 1997*, vol. II (Part Two), pp. 56–57, para. 157.

as adopted by the Drafting Committee was based on the first sentence of the original draft guideline, modified to avoid giving the impression that States or international organizations would have a legal obligation to give effect to the assessment by a treaty body of the validity of reservations. Thus the words “are required ... to take fully into account” had been replaced by “should give full consideration to” (that body’s assessment). However, the enunciation of a general requirement for States and international organizations to cooperate with treaty monitoring bodies had been maintained as proposed by the Special Rapporteur. To mirror the draft guideline, the Special Rapporteur intended to present an additional draft guideline stating that treaty monitoring bodies should take into account the positions of States or international organizations.

57. Draft guideline 3.2.4, now entitled “Bodies competent to assess the validity of reservations in the event of the establishment of a treaty monitoring body”, which had not given rise to many comments during the plenary debate in 2006, was inspired in part by paragraph 6 of the preliminary conclusions adopted by the Commission in 1997. The title had been changed in order to indicate clearly that the draft guideline referred to the establishment of a treaty monitoring body within the meaning of the preceding draft guidelines, as opposed to a dispute settlement body vested with the power to make binding decisions. Some changes had been made to the original text. Apart from a few changes only intended to simplify the text, the Drafting Committee had decided to formulate the draft guideline as a “without prejudice” clause, indicating that the competence of a treaty monitoring body to assess the validity of reservations was without prejudice to the competence of the contracting States or contracting international organizations or of dispute settlement bodies to do so.

58. Draft guideline 3.2.5 (Competence of dispute settlement bodies to assess the validity of reservations) was new. It was a reformulation of the second sentence of draft guideline 3.2.3 as originally proposed by the Special Rapporteur, which the Drafting Committee had decided to delete. It applied only to dispute settlement bodies vested with the power to adopt decisions binding on the parties. It recognized that an assessment made by such bodies of the validity of a reservation was binding upon the parties when such an assessment was necessary for the discharge of the competence of those bodies. The indication that the assessment was binding “as an element of the decision” was intended to clarify that the draft guideline covered not only cases in which the validity of a reservation was the actual subject matter of the decision, but also situations in which the validity of a reservation was one of the elements to be assessed, even incidentally, by a dispute settlement body in order to arrive at a binding decision in a given case. The commentary would provide an explanation of that point.

59. In conclusion, he hoped that the plenary Commission would be in a position to adopt the draft guidelines presented.

60. The Chairperson thanked the Chairperson of the Drafting Committee for his presentation and invited the

members of the Commission to proceed to the adoption of the draft guidelines contained in document A/CN.4/L.744.

Draft guideline 2.4.0 (*Form of interpretative declarations*)

Draft guideline 2.4.0 was adopted.

Draft guideline 2.4.3 bis (*Communication of interpretative declarations*)

Draft guideline 2.4.3 bis was adopted.

Draft guideline 2.9.1 (*Approval of an interpretative declaration*)

Draft guideline 2.9.1 was adopted.

Draft guideline 2.9.2 (*Opposition to an interpretative declaration*)

Draft guideline 2.9.2 was adopted.

Draft guideline 2.9.3 (*Recharacterization of an interpretative declaration*)

Draft guideline 2.9.3 was adopted.

Draft guideline 2.9.4 (*Freedom to formulate an approval, opposition or recharacterization*)

61. Mr. VASCIANNIE said that he was surprised at the inconsistency in the titles of draft guidelines 2.9.4, 2.9.5 and 2.9.6, which in French sometimes used the definite and sometimes the indefinite article. In the English version, the indefinite article should be omitted in all three draft guidelines.

62. The CHAIRPERSON suggested that such questions of an editorial nature could be referred to the Secretariat.

Draft guideline 2.9.4 was adopted with that editorial reservation.

Draft guideline 2.9.5 (*Written form of approval, opposition and recharacterization*)

63. Mr. PELLET wondered why draft guideline 2.9.6 used the phrase “to the extent possible” while draft guideline 2.4.0 used the word “preferably”. He recalled that the Drafting Committee had begun by considering draft guidelines 2.9.5 and 2.9.6 and had then moved on to draft guideline 2.4.0. At the conclusion of those discussions, the phrase “whenever possible” [*“autant que possible”*] had been replaced by “preferably” [*“de préférence”*] in draft guideline 2.4.0 but retained in the other two. He proposed that “preferably” should be used in all three provisions.

64. Mr. NOLTE, supported by Mr. McRAE and Mr. CANDIOTI, recalled that the difference in wording related to the choice that had been made not to require the same things from the author of an interpretative declaration as from the author of an approval, opposition or recharacterization of an interpretative declaration.

65. Mr. Pellet said that he could agree with that reasoning for draft guideline 2.9.6, but not for draft guideline 2.9.5. The intention was the same in draft guideline 2.9.5 as in draft guideline 2.4.0. He proposed using “preferably” in draft guideline 2.9.5 and retaining “to the extent possible” in draft guideline 2.9.6.

Draft guideline 2.9.5, with the amendment proposed by Mr. Pellet, was adopted.

Draft guideline 2.9.6 (*Statement of reasons for approval, opposition and recharacterization*)

Draft guideline 2.9.6 was adopted.

Draft guideline 2.9.7 (*Formulation and communication of an approval, opposition or recharacterization*)

Draft guideline 2.9.7 was adopted.

Draft guideline 2.9.8 (*Non-presumption of approval or opposition*)

Draft guideline 2.9.8 was adopted.

Draft guideline 2.9.9 (*Silence with respect to an interpretative declaration*)

Draft guideline 2.9.9 was adopted.

Draft guideline 2.9.10 (*Reactions to conditional interpretative declarations*)

Draft guideline 2.9.10 was adopted.

Draft guideline 3.2 (*Assessment of the validity of reservations*)

Draft guideline 3.2 was adopted.

Draft guideline 3.2.1 (*Competence of the treaty monitoring bodies to assess the validity of reservations*)

Draft guideline 3.2.1 was adopted.

Draft guideline 3.2.2 (*Specification of the competence of treaty monitoring bodies to assess the validity of reservations*)

Draft guideline 3.2.2 was adopted.

Draft guideline 3.2.3 (*Cooperation of States and international organizations with treaty monitoring bodies*)

Draft guideline 3.2.3 was adopted.

Draft guideline 3.2.4 (*Bodies competent to assess the validity of reservations in the event of the establishment of a treaty monitoring body*)

Draft guideline 3.2.4 was adopted.

Draft guideline 3.2.5 (*Competence of dispute settlement bodies to assess the validity of reservations*)

Draft guideline 3.2.5 was adopted.

The draft guidelines contained in document A/CN.4/L.744, as a whole, as amended, were adopted.

The meeting rose at 12.30 p.m.
