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Summary record of the 3020th meeting

Topic:
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help to move the work forward, possibly without the need for a working group. He was in favour of referring all three draft articles in that form to the Drafting Committee and forming a working group if it proved necessary.

81. Ms. ESCARAMEIA said she shared the Special Rapporteur's view that all three draft articles should simply be referred to the Drafting Committee, but, that not being possible, and in the light of the Special Rapporteur's commendable flexibility, she supported the Chairperson's suggestion.

82. The CHAIRPERSON asked whether all members could agree to the proposal to refer to the Drafting Committee all three draft articles, as reformulated by the Special Rapporteur to reflect the discussion, and, if it proved necessary, to establish a working group chaired by the Special Rapporteur to study draft article 3.

83. Sir Michael WOOD said that, if he could make a slight alteration, his proposal was that the second half of draft article 1 relating to purpose should also, if it proved necessary, be referred to a working group along with draft article 3.

84. The CHAIRPERSON, speaking as a member of the Commission, said that he supported that proposal.

85. Speaking as Chairperson, he took it the Commission wished to proceed in that manner.

It was so decided.

86. Mr. VÁSQUEZ-BERMÚDEZ (Chairperson of the Drafting Committee) announced that the Drafting Committee on the topic "Protection of persons in the event of disaster" was composed of Ms. Escarameia, Mr. Fomba, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Nolte, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Wisnumurti, Sir Michael Wood and Ms. Xue, together with Mr. Valencia-Ospina (Special Rapporteur) and Ms. Jacobsson (Rapporteur) (*ex officio*).

The meeting rose at 1.05 p.m.

3020th MEETING

Tuesday, 14 July 2009, at 10.05 a.m.

Chairperson: Mr. Ernest PETRIČ

Present: Mr. Cafilisch, Mr. Candioti, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Kemicha, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue.

Shared natural resources²³³ (A/CN.4/606 and Add.1, sect. A, A/CN.4/607 and Add.1,²³⁴ A/CN.4/608²³⁵)

[Agenda item 5]

REPORT OF THE WORKING GROUP

1. The CHAIRPERSON invited Mr. Candioti, the Chairperson of the Working Group on shared natural resources, to present the Working Group's report.

2. Mr. CANDIOTI (Chairperson of the Working Group on shared natural resources) said that, at its 3013th meeting on 2 June 2009, the Commission had decided to establish a Working Group on shared natural resources. The Working Group had held one meeting on 3 June 2009, at which its members had exchanged views as to whether it might be feasible for the Commission to consider the issue of transboundary oil and gas resources in the future. The Working Group had had before it the following documents: the questionnaire on oil and gas which had been circulated to Governments;²³⁶ a document on oil and gas prepared by Mr. Yamada, the former Special Rapporteur on shared natural resources (A/CN.4/608); the fourth report on shared natural resources presented by Mr. Yamada;²³⁷ the relevant portions of Mr. Yamada's fifth report on shared natural resources;²³⁸ the comments and observations received from Governments on the questionnaire on oil and gas (A/CN.4/607 and Corr.1 and Add.1); the topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-third session, prepared by the Secretariat (A/CN.4/606 and Add.1) summarizing, *inter alia*, the views expressed by delegations in the Sixth Committee in 2008 on the issue of oil and gas; and two working papers prepared by Mr. Yamada, containing excerpts from summary records of the Sixth Committee's debates on the topic of oil and gas in 2007 and 2008.

3. During its discussions, the Working Group had addressed a number of questions, including that of whether it was really necessary to examine the feasibility of any future work by the Commission on oil and gas resources and whether such work would meet a practical need; the sensitivity of the issues in question; the relationship between the issue of transboundary oil and gas resources and boundary delimitation, especially maritime boundaries; and, lastly, the difficulty of collecting information on the relevant practice. While the Working Group

²³³ In 2007, the Commission considered the Special Rapporteur's fourth report on shared natural resources, which dealt with oil and natural gas (*Yearbook ... 2007*, vol. II (Part One), document A/CN.4/580) and requested a Working Group, chaired by Mr. Enrique Candioti, to examine the questions raised in the report. At the same session, the Commission decided to proceed with the second reading of the draft articles on transboundary aquifers, independently from its future work on oil and natural gas; these two resources would be examined together (*ibid.*, vol. II (Part Two), p. 56, paras. 158–159 and pp. 59–60, paras. 178–183). At its sixtieth session in 2008, the Commission adopted on second reading a preamble and 19 draft articles on the law of transboundary aquifers (*Yearbook ... 2008*, vol. II (Part Two), chap. IV, sect. E), which it transmitted to the General Assembly.

²³⁴ Reproduced in *Yearbook ... 2009*, vol. II (Part One).

²³⁵ *Idem*.

²³⁶ *Yearbook ... 2007*, vol. II (Part Two), p. 56, para. 159.

²³⁷ *Ibid.*, vol. II (Part One), document A/CN.4/580.

²³⁸ *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/591.

recognized that no two situations were alike when it came to the exploration or exploitation of oil and gas resources, some members had been of the opinion that it might be necessary to clarify certain legal aspects, especially those touching on cooperation.

4. Several members had emphasized the need for the Commission to proceed cautiously with regard to oil and gas and to be responsive to States' views. Some members had pointed to the fact that the majority of Governments which had expressed an opinion on the matter had not been in favour of, or had had reservations about, the Commission studying the subject of oil and gas in the future. Some members had, however, drawn attention to the fact that the number of written responses received until then, although substantial, was insufficient for the Commission to decide whether it should undertake any work on the subject.

5. In order to help the Commission to assess the feasibility of any future work on oil and gas, the Working Group had asked Mr. Murase to prepare a study for submission to a Working Group on shared natural resources which might be set up at the Commission's sixty-second session, in 2010. The study, which would be prepared with the assistance of the Secretariat, would analyse Governments' written replies on the subject of oil and gas, their comments and observations in the Sixth Committee and any other relevant information.

6. On the basis of these discussions, the Working Group had decided to make the following recommendations to the Commission: (a) to postpone a decision on any future work on oil and gas until the Commission's sixty-second session; (b) in the meantime, once again to distribute the questionnaire on oil and gas to Governments, while encouraging them to provide comments and information on any other matter concerning the issue of oil and gas and especially on whether the Commission should address that topic. The Commission was invited to take note of the Working Group's report and recommendations.

7. The CHAIRPERSON said that, if he heard no objections, he would take it that the Commission, having taken note of the report of the Working Group on shared natural resources, wished to approve the recommendations contained therein.

It was so decided.

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

[Agenda item 3]

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

8. The Chairperson invited Mr. Pellet, the Special Rapporteur, to resume the presentation of his fourteenth report on reservations to treaties (A/CN.4/614 and Add.1–2).

9. Mr. PELLET (Special Rapporteur) announced that his statement would refer to paragraphs 80 to 127 of his fourteenth report, which were devoted to the validity of reservations and interpretative declarations. That report constituted a follow-up to his tenth report,²³⁹ which he had presented to the Commission in 2005 and which had been concerned with the validity of reservations themselves. If the draft guidelines contained in the fourteenth report were referred to the Drafting Committee, that would make it possible to complete the third part of the Guide to Practice on the validity of reservations and similar unilateral statements.

10. On reflection, he thought that draft guidelines 3.3 on the consequences of the non-validity of reservations and 3.3.1 on the non-validity of reservations and responsibility presented in his tenth report (A/CN.4/588/Add.2), which had been adopted by the Drafting Committee, ought to be placed in chapter IV of the Guide to Practice on the effects of reservations. Moreover, draft guidelines 3.3.2 to 3.3.4 on the nullity of invalid reservations, the effect of unilateral acceptance of an invalid reservation and the effect of collective acceptance of an invalid reservation would be examined at the next session at the same time as the part of the fourteenth report on the effects of reservations and interpretative declarations (paras. 179–290).

11. This part of the fourteenth report on reservations to treaties centred on the validity of reactions to reservations (paras. 94–127), in other words, objections on the one hand and acceptances on the other. He had chosen that order because it seemed easier to understand the position with regard to the validity of acceptances once some thought had been given to the validity of objections. The term “validity” as used in that context had a slightly different meaning to that which it had in the expression “validity of reservations”. The crux of the matter was whether objections and acceptances could produce legal effects, or at least the effects which their authors expected them to have. He urged the Commission members not to reopen the somewhat academic and futile discussion of terminology. The Commission had clearly opted for the term “validity” and it would be quite inappropriate to reopen the debate. Moreover, the members of the Commission would not get anywhere with the argument that the validity of objections and acceptances should not be discussed before the Commission had debated the effect of reservations. He had begun with the question of validity because that followed the logical sequence of the Guide to Practice. In any event, the effects of reservations would be considered at the next session.

12. In view of the very close links between validity and effects, however, he would be pleased to hear members' opinions about the related questions of the effect of objections and the effect of acceptances.

13. Turning to the validity of objections to reservations, he drew attention to the definition of an objection contained in draft guideline 2.6.1 adopted by the Commission at its sixtieth session, which read: “ ‘Objection’ means a unilateral statement, however phrased or named, made by a State or an international organization in response to

* Resumed from the 3014th meeting.

** Resumed from the 3012th meeting.

²³⁹ See footnote 134 above.

a reservation to a treaty formulated by another State or international organization, whereby the former State or organization purports to exclude or to modify the legal effects of the reservation, or to exclude the application of the treaty as a whole, in relations with the reserving State or organization.”²⁴⁰ First the ICJ in 1951 in its advisory opinion on *Reservations to the Convention on Genocide*, then the Commission itself had indicated that the rules applying to the validity of objections should be brought into line with those on the validity of reservations. In other words, the ICJ and the Commission had taken the view that the criterion for deciding whether an objection was invalid was the compatibility of the reservation with the object and purpose of the treaty. If one had a reasonable idea of the object and purpose of the treaty, that position considerably restricted the ability to object to a reservation. Nevertheless, it had become clear that that position was at odds with the principle of consensualism since, if a reservation was not incompatible with the object and purpose of a treaty, it was impossible to object to it. In the 1966 draft text on the law of treaties²⁴¹ which had resulted in the 1969 and 1986 Vienna Conventions, the Commission had dissociated the conditions for the validity of objections from the conditions for the validity of reservations. In short, it had simply refrained from laying down conditions for the validity of objections.

14. That raised the question of whether it was sufficient to hold that, in accordance with the fundamental principle of consensualism, no State could have a reservation foisted upon it unless, vice versa, it were accepted that an objection thereto would always be valid. After all, an objection merely gave practical effect to the principle that a State could in no way be forced to accept, by means of a treaty, provisions which it did not want. That statement was true of simple objections, which formed the subject of article 21, paragraph 3, of the 1969 Vienna Convention, and of objections with a maximum effect, as was clear from article 20, paragraph 4 (b) of that Convention. He therefore thought that a simple objection and an objection with a maximum effect could never be invalid.

15. The problem arose more with regard to what were generally called objections with an intermediate effect, in other words, objections which purported to exclude, in relations between the two States concerned, not only the provision to which the reservation related, but also other provisions of the treaty. In his opinion, such objections must always be deemed valid, even when their purpose was to deprive the treaty of its object and purpose in relations between the two States in question. Hence, even in that context, the objection could not be called invalid for two reasons. First, because he who could do more could do less, in other words, if a State could, by means of an objection, completely exclude the application of a treaty, it could also exclude that of some provisions of the treaty, while maintaining treaty relations with the reserving State. Secondly, an objection with an intermediate effect allowed a treaty to apply, albeit while adding certain restrictions to those intended by the author of the reservation.

²⁴⁰ For the commentary to this draft guideline, see *Yearbook ... 2005*, vol. II (Part Two), pp. 77–82.

²⁴¹ *Yearbook ... 1966*, vol. II, document A/6309/Rev.1, p. 177.

16. It had been suggested that such an objection was a “counter-reservation”. That proposal was attractive, but not completely convincing. A reservation was a unilateral declaration to which an objection could be made, but there was nothing to say that it was possible to object to an objection with an intermediate effect, even if it were to be termed a “counter-reservation”. In any event, an objection to such a “counter-reservation” would be out of time in the light of the actual definition of reservations in article 2, paragraph 1 (d), of the Vienna Conventions, as reproduced in draft guideline 1.1 of the Guide to Practice. Admittedly, late objections were not completely excluded by the Guide to Practice, but they could produce an effect only if no State was opposed to them. It would be preferable to discard that attractive, but risky intellectual construct which, in practice, led nowhere, and to take objections with an intermediate effect for what they were, in other words, objections and objections which were in principle valid insofar as they complied with provisions of article 20 of the Vienna Conventions. With a view to the progressive development of international law, he considered that it would be wise to investigate the effects that such objections with an intermediate effect could produce.

17. In that connection, he drew attention to practice in the matter, which was described in paragraphs 108 and 109 and also in paragraphs 117 and 118 of the fourteenth report. The only practice which he had found related to objections to reservations to article 66 of the Vienna Conventions themselves. Basically, that practice was extremely reasonable in that the objecting States had never in that context acted arbitrarily, but had taken care to restrict the exclusion of the application of certain provisions to those connected with the article to which the reservation had been made, in that case articles 53 and 64 of the Vienna Conventions. A provision on that practice would have to be embodied in the draft guidelines *de lege ferenda*, but it would be more logical to put it in the fourth part of the Guide to Practice on the effects of reservations and objections, than in the section on validity. Rather than challenging the validity of objections with an intermediate effect, it was a question of restricting the effects that they could produce.

18. The same considerations seemed to apply to “super-maximum” intentions, in other words, objections by which their author intended to require the reserving State to apply the treaty in its entirety, without the reservations. At first, he had been tempted to consider that such objections were not valid, since wishing to impose a “super-maximum” effect on an objection was a way of distorting the intentions of the State which had formulated the reservation, something which undermined the very principle of consensualism, of which he was particularly fond. However, after a discussion with members of the Commission and United Nations human rights bodies and in order to take account of the case law of the European Court of Human Rights, he had become convinced, or had allowed himself to be convinced, that that position was immoderate and too inflexible and that there, once again, the crux of the matter was not the validity of objections with a “super-maximum” effect, but of knowing if, and on what conditions, such objections could produce their effects.

19. In the end, even if it was true that the distinction between invalidity and absence of effects was tenuous, it seemed to be of theoretical relevance and was consistent with the system of the Vienna Conventions. He had not therefore proposed any draft guideline on the validity of objections because any problems arose in the context of effect and not that of validity. It would be up to the Commission to revisit that issue when it examined the part of the fourteenth report on the effects of reservations and interpretative declarations.

20. At the most, it could be held that an objection made after there had been acceptance would not be valid, but draft guideline 2.8.12, which the Commission had adopted during the first part of the current session (3007th meeting above, para. 1), took a different standpoint and there was no point in going back on it.

21. As for the validity of acceptances, according to some legal writers, including Frank Horn,²⁴² one of the top specialists in the matter, the acceptance of an invalid reservation would itself be invalid. Nevertheless, as he had already pointed out in paragraph 203 of his tenth report,²⁴³ the question was not one of validity, but of effect and it was not clear that acceptance, even express acceptance, of an invalid reservation produced no effect.

22. Of course, such acceptance did not make the reservation valid, but the possibility could not be ruled out that it permitted the reserving State to be bound by the treaty. In any event, it seemed fairly obvious that an invalid reservation could be unanimously accepted by the other parties to a treaty. Moreover, considering the tacit acceptance of a reservation—the form which it took in the vast majority of cases—to be invalid was completely unreasonable.

23. For all those reasons, he had decided to present just one draft guideline on the substantive validity of acceptances and objections, draft guideline 3.4, which read: “Acceptances of reservations and objections to reservations are not subject to any condition of substantive validity.” But it was understood that the freezing, or restriction, of the effects of certain objections would form the subject of draft guidelines in the third part of the fourteenth report on the effects of reservations, acceptances and objections.

24. The CHAIRPERSON thanked the Special Rapporteur and asked the members of the Commission for their comments.

25. Mr. GAJA said that there was no question of the quality of the Special Rapporteur’s fourteenth report and that he would confine his comments to doubts or criticisms regarding some specific issues. First, the definition of objections to reservations, presented by the Special Rapporteur in 2005 in draft guideline 2.6.1, referred to a statement whereby a State or international organization purported to modify the legal effects of a reservation and whose purpose was therefore the partial rejection of a reservation, although that kind of objection was rare.

²⁴² *Reservations and Interpretative Declarations to Multilateral Treaties*, The Hague, T.M.C. Asser Instituut, Swedish Institute of International Law, Studies in International Law, vol. 5 (1988), p. 121.

²⁴³ *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/558 and Add. 1–2, p. 188.

By entering a partial objection, the objecting State could introduce elements which made the combination of reservation and objection invalid, for reasons connected with the objection rather than the reservation. The reservation could, in fact, be valid but if, for example, the objecting State accepted it while at the same time introducing into that acceptance conditions relating, for example, to non-discrimination, the combination of reservation and objection might conceivably be invalid. It therefore seemed necessary to soften the categorical statement contained in draft guideline 3.4 (Substantive validity of acceptances and objections). A partial objection to a valid reservation could well pose problems of validity.

26. Secondly, the Special Rapporteur wrote that “the validity (or non-validity) of a reservation must be evaluated independently of the acceptances or objections to which it gave rise” (para. 94) and then that “acceptance of a reservation by a contracting State or by a contracting international organization shall not change the nullity of the reservation” (para. 124). At the same time, the Special Rapporteur considered that “in light of the presumption contained in article 20, paragraph 5, of the Vienna Conventions, States or international organizations which have remained silent on a reservation, whether valid or not, are deemed to have ‘accepted’ the reservation” (para. 126). What was a matter of concern was that, in saying that there was tacit acceptance also of a reservation that might be invalid, no account was being taken of a fairly widespread practice which consisted in challenging the validity of reservations after the 12-month period stipulated in article 20, paragraph 5, had elapsed. That practice suggested that there was tacit acceptance only of reservations which were deemed valid, because otherwise States could not go back on the acceptance of reservations once they had given it.

27. Moreover, maintaining that contracting States accepted invalid reservations through their silence was likely to make the rules on the validity of reservations worthless, even if acceptance was not considered to have any bearing on validity; the reservation was still invalid, but States could no longer raise the issue of invalidity. The reservation would thus have produced a result even if it was not valid. While parties to a treaty could unanimously agree to amend the reservation regime provided for in the treaty, it appeared difficult to infer that an agreement existed simply because the other parties had remained silent in the 12 months following ratification of the treaty, or until the expiry of any other period of time established in accordance with article 20, paragraph 5, of the Vienna Conventions.

28. Thirdly, with regard to what the Special Rapporteur called objections with an intermediate effect, the example he quoted, which was the most noteworthy, was that of certain States which had made reservations to article 66 of the 1986 Vienna Convention, concerning dispute settlement procedures. Those States had stated that they did not consider that section 5 of the Convention applied to reserving States. He did not recall that he had ever coined the term “counter-reservation” which the Special Rapporteur had attributed to him, but in any event it referred, not to a reservation in the technical sense, but to a reaction going beyond the reservation. It entailed a rewriting of contractual relations between the reserving and the

objecting State. As the Special Rapporteur had pointed out, it remained to be seen whether an objection with an intermediate effect could produce the effect intended by its author. That question would be tackled in the future and the Special Rapporteur would then give his opinion on whether the objecting State might unilaterally exclude the application of a whole section of a treaty to a reserving State, or whether there had to be at least tacit acceptance by the reserving State before an objection with an intermediate effect could produce its intended effect.

29. Mr. PELLET said that he had understood the first and second, but not the third objection of Mr. Gaja, who appeared to be saying that, while one could not rule out the possibility of the reservations regime being amended in the course of time, one could certainly not infer from unanimous tacit acceptance that a reservation had been accepted. He was fully in agreement with that statement and did not think that he had said anything to the contrary.

30. Mr. GAJA said that he was delighted to hear that. His impression on hearing the Special Rapporteur's presentation at the beginning of the meeting had been that the absence of a reaction from any State could have been taken to mean that the reservations regime had been amended, or that an otherwise invalid reservation had been accepted. His substantive objection mainly concerned the application of article 20, paragraph 5, of the Vienna Conventions.

The meeting rose at 11.05 a.m.

3021st MEETING

Wednesday, 15 July 2009, at 10.05 a.m.

Chairperson: Mr. Ernest PETRIČ

Present: Mr. Cafilisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Kemicha, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue.

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

[Agenda item 3]

FOURTEENTH REPORT OF THE SPECIAL
RAPPORTEUR (*continued*)

1. The CHAIRPERSON invited the Special Rapporteur to resume his introduction of the second part of his fourteenth report on reservations to treaties (A/CN.4/614/Add.1).

2. Mr. PELLET (Special Rapporteur) said that the question of the validity of interpretative declarations had to be approached somewhat differently from that of reservations. For one thing, the 1969 and 1986 Vienna Conventions were silent on interpretative declarations; indeed, that was one of the major lacunae in the Conventions. For another, the question of the validity of interpretative declarations was bound up with their definition, in other words, with the distinction between a reservation and an interpretative declaration. As recalled in paragraph 129 of his report, the definition of interpretative declarations in no way prejudged the validity or the effect of such declarations. Moreover, reclassifying an interpretative declaration as a reservation, using the method set out in draft guidelines 1.3 and 1.3.1, on the grounds that the declaration purported to exclude or modify the legal effect of certain provisions of the treaty, did not mean that the unilateral statement was invalid, merely that its validity must be assessed on the basis of the criteria for the validity of reservations, which were contained in draft guidelines 3.1 to 3.1.13. That requirement was covered by draft guideline 3.5.1, which read as follows:

“3.5.1 Conditions of validity applicable to unilateral statements which constitute reservations

“The validity of a unilateral statement which purports to be an interpretative declaration but which constitutes a reservation must be assessed in accordance with the provisions of guidelines 3.1 to 3.1.15.”

3. While it might seem obvious that, when a statement constituted a reservation, the criteria to be applied were those for the validity of reservations, he believed that it would be useful to state that point explicitly, since the Commission was drafting a Guide to Practice, not a treatise for scholars. Indeed, the problem often arose in practice. For example, in the *English Channel* case referred to in paragraph 135 of the report, the United Kingdom had claimed that a reservation by France was actually an interpretative declaration. In concluding that it was in fact a reservation, the Court of Arbitration had considered its purported effects without questioning the validity of the reservation as such. On the other hand, in the case of *Belilos* referred to in paragraph 137 of the report, the European Court of Human Rights, after having reclassified the declaration of Switzerland as a reservation, found it to be invalid. In paragraph 136 of the report, and in the footnote thereto, other examples were given, outside of the content of disputes, of “false” interpretative declarations being reclassified as reservations, the validity of which had then been challenged.

4. The central issue was whether it was possible for true interpretative declarations, in other words, those that matched the definition given in draft guideline 1.2, to be invalid. It was important to bear in mind that, just because a declaration was valid, it did not necessarily mean that it was “right”; similarly, just because it was invalid, it did not mean that it was “wrong”. The interpretation of treaties was not an exact science: one person's truth was not necessarily another's. Even Kelsen had acknowledged that there might be several correct interpretations of a statute, which were all