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**A/CN.4/3061**

**Summary record of the 3061st meeting**

Topic:  
**<multiple topics>**

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regarding the connection between the two subjects of the law of treaties and the law of the use of force.

39. The handling of articles 70 and 72 of the 1969 Vienna Convention was a crucial matter. He approved of the Special Rapporteur's proposal at the end of paragraph 160 of the report that both provisions be mentioned in the commentaries, perhaps the commentary to draft article 8.

40. The fundamental question raised by China and its accompanying observation regarding the possible need to distinguish between rules depending on whether the armed conflict in question was internal or international were important and relevant. The approach the Special Rapporteur proposed in paragraph 162 seemed to be going in the right direction. The additional rule proposed for incorporation in draft article 8 appeared *prima facie* to have the merit of being logical and justified from a legal point of view. The question of the form that the draft articles should take should be settled in due course. He was in favour of referring the draft articles under consideration to the Drafting Committee.

41. Mr. AL-MARRI said that Member States had submitted many comments on the draft articles and in particular on the question of whether they should be extended to non-international armed conflicts and to treaties to which international organizations were a party. The Commission must study those comments with great care. The Special Rapporteur had very wisely examined the draft articles that needed closer scrutiny. It was therefore unnecessary to review all the draft articles that had been adopted earlier or to look at jurisprudence.

42. It was inadvisable to widen the definition of "armed conflict", as some members of the Commission were proposing. All the draft articles presented by the Special Rapporteur were interesting and should be referred to the Drafting Committee. He hoped that the Commission would be able to complete its consideration of the draft articles on second reading before the end of the quinquennium.

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

[Agenda item 1]

43. Mr. McRAE (Chairperson of the Drafting Committee) said that the Drafting Committee on the effects of armed conflicts on treaties would comprise Mr. Candiotti, Mr. Fomba, Mr. Gaja, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Vasciannie (*ex officio*), Mr. Vázquez-Bermúdez, Mr. Wisnumurti and Sir Michael Wood, as well as Mr. Cafilisch (Special Rapporteur).

*The meeting rose at 11.30 a.m.*

## 3061st MEETING

*Thursday, 8 July 2010, at 10.05 a.m.*

*Chairperson:* Mr. Nugroho WISNUMURTI

*Present:* Mr. Al-Marri, Mr. Cafilisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Perera, Mr. Saboia, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Sir Michael Wood.

### Effects of armed conflicts on treaties (*concluded*) (A/CN.4/622 and Add.1, A/CN.4/627 and Add.1)

[Agenda item 5]

#### FIRST REPORT OF THE SPECIAL RAPporteur (*concluded*)

1. The CHAIRPERSON invited the Commission to resume its consideration of the Special Rapporteur's first report on the effects of armed conflicts on treaties, in particular draft articles 13 to 18 and the other points raised by Member States and general issues (A/CN.4/627 and Add.1, paras. 115–164).

2. Ms. JACOBSSON said that the Special Rapporteur's first report took an open-minded and balanced approach that clearly took into consideration the views expressed by States, while also dealing squarely with problematic issues. She agreed with Mr. Candiotti that the Commission should not lose sight of the purpose of the current exercise, which was to ensure the continuation of treaty relations in the event of armed conflicts. The greatest challenge, as she saw it, was that the Commission had decided to cover both international and non-international conflicts, while also attempting to limit the number of situations in which treaties could be suspended or terminated during such conflicts. The Commission's aim was not to expand the scope of the exceptions contained in the 1969 Vienna Convention, but rather to lay down the legal framework for the stability and continued operation of treaties in times of armed conflict.

3. With regard to draft article 13, she agreed with the Special Rapporteur that it should be retained. She found it acceptable that the article was silent on questions relating to notification and opposition, time limits and peaceful settlement of disputes and thus did not cover every aspect of the suspension of the operation of a treaty in exercise of the right of self-defence. It was important to retain the phrase "in accordance with the Charter of the United Nations" so as to avoid conveying the message that the Commission was open to other interpretations. The only change she might propose was to insert the word "inherent" before "right".

4. Mr. McRae's proposal to have the draft article begin with the phrase "notwithstanding" (rather than "[s]ubject to") "the provisions of article 5" seemed logical at first

\* Resumed from the 3058th session.

sight, particularly for Commission members, like herself, who were in favour of safeguarding the sovereign State's right to individual and collective self-defence; however, the term "notwithstanding" differed significantly in meaning from "subject to", as the former implied a hierarchy while the latter was more neutral. In view of the purpose of the current exercise, namely to ensure the continuation of treaty relations in the event of armed conflict, she was in favour of retaining the formulation proposed by the Special Rapporteur in his report.

5. As to draft article 15, she agreed with other Commission members who had argued in favour of retaining an explicit reference to General Assembly resolution 3314 (XXIX). The resolution had achieved a particular standing in international law: it was referred to and invoked in international courts and had recently played a crucial role in the definition of the phrase "act of aggression" as an element of the crime of aggression, over which the International Criminal Court would have jurisdiction.<sup>248</sup> Although it did not cover all conceivable forms of aggression, it was the most widely accepted and applied definition currently available. She was not in favour of widening the scope of the draft article by making an explicit reference to the use of force.

6. However, draft article 15 was not problem-free. Although she understood that the rationale behind the draft article was that the Security Council should determine whether a State was an aggressor, it was unsatisfactory to be forced to accept that the five permanent members of the Security Council with veto power would never be subject to such a decision and would always benefit from the article. Since the Security Council had rarely referred to acts of aggression or explicitly labelled a State as an aggressor, the issue was somewhat theoretical, but it also posed an ethical problem with regard to policy.

7. With respect to the cluster of "without prejudice" clauses, she concurred with the Special Rapporteur that it was wise, in the context of armed conflict, to limit the scope of draft article 14 to Member States' obligations arising from Chapter VII of the Charter of the United Nations. With regard to draft article 16, she welcomed the fact that it referred to neutrality *per se*—whether that meant the rights and duties of permanently neutral States or those of States choosing neutrality—and not to the imprecise term "neutrals" formerly employed by the Commission. Even though it was true, as Mr. Dugard had pointed out, that there was little room for neutrality under the Charter of the United Nations—as evidenced by Security Council decisions on particular conflicts—neutrality had not yet been eliminated entirely from the sphere of international law. Under the *lex specialis* regime of neutrality, the rights and duties of neutral States took precedence over the draft articles currently under consideration by the Commission. With regard to draft article 17, she was in favour of the longer version of the two proposed by the Special Rapporteur.

8. As to whether, in the context of draft article 2, subparagraph (b), the same rules applied, without distinction, to both international and non-international armed conflicts,

she found it tempting to consider making a distinction between the two types of situations along the lines proposed by Mr. Nolte, but she was not sure whether that approach was workable. As a practising lawyer in her country's Ministry of Foreign Affairs, she had witnessed first-hand how difficult it was to identify and label a conflict as either international or non-international, as well as the legal subtleties involved. However, it did seem to be worth a try. The crucial question was whether there should be different consequences in situations of non-international conflict or whether in those situations the threshold for applying exceptions should be higher.

9. In conclusion, she recommended referring the draft articles to the Drafting Committee.

10. The CHAIRPERSON invited the Special Rapporteur to sum up the debate on the effects of armed conflicts on treaties.

11. Mr. CAFLISCH (Special Rapporteur) thanked the Commission members for their comments and advice, which had afforded him a number of insights and in certain cases had caused him to change his mind. During the debate, some general points had emerged. The first of those was that draft articles 13 to 18 were supplementary to draft articles 1 to 12, and more specifically to draft articles 3 to 7, which constituted the core of the draft. However, that should not induce the Commission to let down its guard and neglect to set the necessary limits, particularly in draft articles 13 and 15. Those limits should be set with precision and should be based, as far as possible, on the existing rules of the law of nations.

12. The second general point—and it should be stressed—was that the draft articles were intended to apply to both international and non-international armed conflicts, the only question arising in that regard being the potential effects that would be produced by each type. In order to underscore the point that the draft articles applied to both types of conflicts, which were not always easy to distinguish, it had been proposed during the debate to insert the following reference in the draft: "The present draft articles apply to non-international armed conflicts, which, by their nature or extent are likely to affect the application of treaties between States parties." He could accept that wording and would leave it up to the Drafting Committee to decide where to place it.

13. The third general point was that, among draft articles 13 to 18 presented in paragraph 115 to 151 of the report that had just been considered by the Commission, there were some—namely draft articles 13 and 15—that limited the rights and freedoms of States in respect of treaty matters, and others—namely draft articles 14, 16 and 17—that were safeguard or "without prejudice" clauses. Since the debate had focused on draft articles 13 and 15, he would address those first.

14. Before doing so, however, it might be useful to consider what would happen if, as some Commission members had suggested, those two provisions were deleted. It would no longer be possible to exercise fully the inherent right of self-defence, since the right would be subject to treaty law, and the aggressor State, even if stigmatized

<sup>248</sup> See footnote 240 above.

by the international community, could take advantage of its unlawful behaviour to free itself of treaty obligations that it found inconvenient. He would have some trouble accepting that consequence, even if it was true that the inclusion of draft articles 13 and 15 did pose certain problems relating to definitions. While he did not wish to minimize them, problems of interpretation and application could not be accepted as justification for the elimination of the provisions concerned.

15. As far as draft article 13, in particular, was concerned, while it might be difficult to identify an aggressor State or a State exercising its inherent right to self-defence in accordance with the requirements established by international law (urgency, proportionality etc.), that difficulty did not justify the deletion of the article. Draft article 13 served as a reminder that there were, in fact, situations in which the right to self-defence took precedence over treaty obligations. That would occur whenever the State acting in self-defence so decided, but its decision would subsequently be subject to review. That was how self-defence worked. The only argument in support of the deletion of draft article 13 might be the existence of Article 103 of the Charter of the United Nations, according to which rights and obligations under the Charter of the United Nations—in this instance, the exercise of the inherent, full and complete right to self-defence—prevailed over treaty law. Thus a State acting in self-defence could disregard any treaty obligations that limited that right—since the right to self-defence would necessarily prevail over them—under both customary law and the provisions of the Charter of the United Nations, but only if and to the extent that the treaty obligations in question hampered or restricted the exercise of the right to self-defence. That was something that had to be made clear, and draft article 13 had accomplished that; a “without prejudice” clause would be inadequate.

16. Concerning the argument that the Special Rapporteur and his predecessor had allowed themselves to be unduly influenced by article 7 of the 1985 resolution of the Institute of International Law,<sup>249</sup> it would suffice to say that if they had been, it was with good reason. In his view, article 13 should be retained, and he believed that this view reflected the wishes of the majority of the members of the Commission.

17. Another point concerned a suggestion he had made in paragraph 124 of his report that the right to suspend treaty obligations under draft article 13 be made subject to the provisions of draft articles 4 and 5. As he had explained during the debate, that suggestion had been somewhat ill-advised, and he withdrew it. The focus in draft article 13 was on the process of self-defence: it was no longer a question of safeguarding the stability and continuation of treaty obligations, but rather of ensuring that the right to self-defence could be exercised fully, provided that it was in conformity with the legal requirements pertaining to self-defence.

18. It had been suggested that draft article 13 would be more closely aligned with existing law if the phrase “in accordance with the Charter of the United Nations” was

replaced by “as recognized in the Charter of the United Nations”. In his own view, the current wording was preferable, since it covered self-defence as provided for under both the Charter of the United Nations and customary law. Still with regard to draft article 13, the Special Rapporteur had encountered little opposition and even approval when he had proposed to delete the words “individual or collective” from the title and to retain them only in the text of the draft article, since it was unnecessary to include them in both places.

19. Draft article 15 was, in a sense, the reverse of draft article 13: its aim was to prevent a State committing “an armed attack” [in French “*agression armée*”] (Article 51 of the Charter of the United Nations) or an “act of aggression” (Article 39 of the Charter of the United Nations) from taking advantage of a conflict that it had provoked in order to free itself from treaty obligations that it found inconvenient, as had frequently occurred in the past. Those considerations suggested that the Commission should adhere to the specific notion of aggression, including the definition contained in General Assembly resolution 3314 (XXIX). In place of that, he could have accepted a reference to Article 2, paragraph 4, of the Charter of the United Nations, as indicated in paragraph 139 of his report. However, it should be recognized that such a solution would lead to a considerable broadening of the scope of draft article 15, with the result that the State in question might more easily—too easily—free itself of its treaty obligations.

20. The issue that had dominated the debate on draft article 15 was the reference it contained to General Assembly resolution 3314 (XXIX), which defined the term “act of aggression”. That definition was, moreover, reproduced in article 8 *bis* of the Rome Statute of the International Criminal Court, as contained in the resolution adopted by consensus in Kampala in 2010. In his view, even if the definition was imperfect, it seemed to be generally accepted, as evidenced by its inclusion in the Rome Statute of the International Criminal Court, and the reference should be retained. The fact that the International Criminal Court would have jurisdiction over crimes of aggression committed by individuals rather than acts of aggression committed by States did not change the situation. He himself believed that reference should be made to both the Charter of the United Nations and resolution 3314 (XXIX), but perhaps they should be placed at different levels, as had been suggested by certain Commission members, by referring to “aggression within the meaning of the Charter of the United Nations, as defined by General Assembly resolution 3314 (XXIX)”.

21. It had also been proposed to delete from draft article 15 the phrase that, while prohibiting an aggressor State from using an armed conflict as an opportunity to free itself from treaty obligations, limited the prohibition to situations in which the removal of those obligations would be to the benefit of that State. To his mind, and to that of other Commission members, that limitation was indispensable. Deleting it would tend to result in the elimination of all treaty obligations of the aggressor State and would be contrary to the spirit of the set of draft articles, which was to promote the stability of treaty relations.

<sup>249</sup> See footnote 138 above.

22. Sandwiched between draft articles 13 and 15 was draft article 14. Consideration might be given to moving it from that location and placing it after draft article 15 as a “without prejudice” clause. Some Commission members had proposed that draft article 14 be used as a “without prejudice” clause, not only for the decisions of the Security Council, but also for the matters currently dealt with in draft articles 13 and 15. Given the desire expressed by what he took to be a majority of Commission members to retain those provisions, that suggestion no longer seemed pertinent.

23. Draft article 16, which protected the rights and obligations arising from the laws of neutrality, had been accepted, or at least not opposed, by a majority of Commission members. One member had expressed doubts about the importance of neutrality in contemporary international law, and in particular under the collective security framework of the United Nations, and had questioned the usefulness of the draft article. He himself was not prepared to take that position. The existence of the Charter of the United Nations removed neither the possibility of armed conflict nor that of neutrality, whether temporary or permanent. Accordingly, the “without prejudice” clause in draft article 16 should be retained, all the more so as some Member States were quite attached to their neutral status.

24. Article 17 set out a number of other possible causes of termination or suspension of treaties: the agreement of the parties; a material breach; supervening impossibility of performance, temporarily or permanently; and a fundamental change of circumstances. The question raised by some Member States was whether that list of examples should be replaced by an abstract formulation merely referring to other causes of termination, withdrawal or suspension in a general way. However, since no member of the Commission, to his recollection, had endorsed that approach, he proposed to retain the text as it stood.

25. Lastly, a proposal to add to the examples the phrase “the provisions of the treaty itself”, an addition that would be consonant with article 57, subparagraph (a), of the 1969 Vienna Convention, had been favourably received.

26. The idea of merging articles 12 and 18 had been found generally acceptable.

27. Turning to the general issues discussed at the end of his report, he noted that the suggestion that treaties to which international organizations were parties be considered, once the present draft articles had been completed, had been strongly opposed by one member of the Commission. If the Commission took that position, it would nevertheless have to find a way to make the draft articles apply to multilateral treaties, such as the United Nations Convention on the Law of the Sea, to which international organizations as well as States were parties. A provision along those lines, the wording of which might be improved, had been submitted at the end of the first part of the session. It stated: “The present draft articles are without prejudice to any rules of international law that regulate the treaty relations of international organizations in the context of armed conflict.”

28. With regard to the effects of armed conflict on treaties, it seemed obvious that articles 70 and 72 of the 1969 Vienna Convention were applicable by analogy, but that point should be mentioned, perhaps in the commentary to draft article 8 on notification. Another point to be considered was whether the effects of armed conflict differed for different types of conflicts. It had been suggested by one Member State that a rule should be drafted to the effect that a treaty might be terminated only in the context of international conflicts, whereas in the context of internal conflicts only suspension was possible. The question was not whether internal conflicts were covered by the draft articles—they most certainly were—but whether their effects were different from those of international conflicts. While there was a certain logic to that position, it did not seem to be grounded in practice, but strayed instead into the realm of *lex ferenda*. The suggestion had met with a tepid response, which he interpreted to mean that the Commission did not wish to include a provision on the different effects on treaties of international versus internal conflicts; the effects would thus have to be evaluated on a case-by-case basis.

29. In conclusion, he requested that draft articles 12 to 17 should be referred to the Drafting Committee.

*Draft articles 12 to 17 were referred to the Drafting Committee.*

**Reservations to treaties (continued)\* (A/CN.4/620 and Add.1, sect. B, A/CN.4/624 and Add.1–2, A/CN.4/626 and Add.1, A/CN.4/L.760 and Add.1–3)**

[Agenda item 3]

REPORT OF THE DRAFTING COMMITTEE (*continued*)\*

30. Mr. VÁZQUEZ-BERMÚDEZ, speaking on behalf of the Chairperson of the Drafting Committee, introduced the titles and texts of draft guidelines 5.1 to 5.4.1, provisionally adopted by the Drafting Committee in the course of two meetings held on 1 and 2 June 2010, as contained in document A/CN.4/L.760/Add.2, which read:

**5. Reservations, acceptances of and objections to reservations, and interpretative declarations in the case of succession of States**

**5.1 Reservations and succession of States**

**5.1.1 [5.1] Newly independent States**

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of guideline 3.1 of the Guide to Practice.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the relevant rules set out in Part 2 (Procedure) of the Guide to Practice apply in respect of that reservation.

\* Resumed from the 3058th meeting.

4. For the purposes of this Part of the Guide to Practice, “newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible.

#### 5.1.2 [5.2] *Uniting or separation of States*

1. Subject to the provisions of guideline 5.1.3, a successor State which is a party to a treaty as the result of a uniting or separation of States shall be considered as maintaining any reservation to the treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates, unless it expresses its intention not to maintain one or more reservations of the predecessor State at the time of the succession.

2. A successor State which is a party to a treaty as the result of a uniting or separation of States may not formulate a new reservation.

3. When a successor State formed from a uniting or separation of States makes a notification whereby it establishes its status as a party or as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but to which the predecessor State was a contracting State, that State shall be considered as maintaining any reservation to the treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates, unless it expresses a contrary intention when making the notification or formulates a reservation which relates to the same subject matter as that reservation. That successor State may formulate a new reservation to the treaty. 4. A successor State may formulate a reservation in accordance with paragraph 3 only if the reservation is one the formulation of which would not be excluded by the provisions of subparagraph (a), (b) or (c) of guideline 3.1 of the Guide to Practice. The relevant rules set out in Part 2 (Procedure) of the Guide to Practice apply in respect of that reservation.

#### 5.1.3 [5.3] *Irrelevance of certain reservations in cases involving a uniting of States*

When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State, such reservations as may have been formulated by any such State which, at the date of the succession of States, was a contracting State in respect of which the treaty was not in force shall not be maintained.

#### 5.1.4 *Establishment of new reservations formulated by a successor State*

Part 4 of the Guide to Practice applies to new reservations formulated by a successor State in accordance with guideline 5.1.1 or 5.1.2.

#### 5.1.5 [5.4] *Maintenance of the territorial scope of reservations formulated by the predecessor State*

Subject to the provisions of guideline 5.1.6, a reservation considered as being maintained in conformity with guideline 5.1.1, paragraph 1, or guideline 5.1.2, paragraphs 1 or 3, shall retain the territorial scope that it had at the date of the succession of States, unless the successor State expresses a contrary intention.

#### 5.1.6 [5.5] *Territorial scope of reservations in cases involving a uniting of States*

1. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of only one of the States forming the successor State becomes applicable to a part of the territory of that State to which it did not apply previously, any reservation considered as being maintained by the successor State shall apply to that territory unless:

(a) the successor State expresses a contrary intention when making the notification extending the territorial scope of the treaty; or

(b) the nature or purpose of the reservation is such that the reservation cannot be extended beyond the territory to which it was applicable at the date of the succession of States.

2. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of two or more of the uniting States becomes applicable to a part of the territory of the successor State to which it did not apply at the date of the succession of States, no reservation shall extend to that territory unless:

(a) an identical reservation has been formulated by each of those States in respect of which the treaty was in force at the date of the succession of States;

(b) the successor State expresses a different intention when making the notification extending the territorial scope of the treaty; or

(c) a contrary intention otherwise becomes apparent from the circumstances surrounding that State’s succession to the treaty.

3. A notification purporting to extend the territorial scope of reservations within the meaning of paragraph 2 (b) shall be without effect if such an extension would give rise to the application of contradictory reservations to the same territory.

4. The provisions of the foregoing paragraphs shall apply *mutatis mutandis* to reservations considered as being maintained by a successor State that is a contracting State, following a uniting of States, to a treaty which was not in force for any of the uniting States at the date of the succession of States but to which one or more of those States were contracting States at that date, when the treaty becomes applicable to a part of the territory of the successor State to which it did not apply at the date of the succession of States.

#### 5.1.7 [5.6] *Territorial scope of reservations of the successor State in cases of succession involving part of a territory*

When, as a result of a succession of States involving part of a territory, a treaty to which the successor State is a party or a contracting State becomes applicable to that territory, any reservations to the treaty formulated previously by that State shall also apply to that territory as from the date of the succession of States unless:

(a) the successor State expresses a contrary intention; or

(b) it appears from the reservation that its scope was limited to the territory of the successor State that was within its borders prior to the date of the succession of States, or to a specific territory.

#### 5.1.8 [5.7] *Timing of the effects of non-maintenance by a successor State of a reservation formulated by the predecessor State*

The non-maintenance, in conformity with guideline 5.1.1 or 5.1.2, by the successor State of a reservation formulated by the predecessor State becomes operative in relation to another contracting State or contracting organization or another State or international organization party to the treaty only when notice of it has been received by that State or international organization.

#### 5.1.9 [5.9] *Late reservations formulated by a successor State*

A reservation shall be considered as late if it is formulated:

(a) by a newly independent State after it has made a notification of succession to the treaty;

(b) by a successor State other than a newly independent State after it has made a notification establishing its status as a party or as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but in respect of which the predecessor State was a contracting State; or

(c) by a successor State other than a newly independent State in respect of a treaty which, following the succession of States, continues in force for that State.

#### 5.2 *Objections to reservations and succession of States*

##### 5.2.1 [5.10] *Maintenance by the successor State of objections formulated by the predecessor State*

Subject to the provisions of guideline 5.2.2, a successor State shall be considered as maintaining any objection formulated by the predecessor State to a reservation formulated by a contracting State or contracting organization or by a State party or international organization party to a treaty unless it expresses a contrary intention at the time of the succession.

### **5.2.2 [5.11] *Irrelevance of certain objections in cases involving a uniting of States***

1. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the State so formed, such objections to a reservation as may have been formulated by any such State which, at the date of the succession of States, was a contracting State in respect of which the treaty was not in force shall not be maintained.

2. When, following a uniting of two or more States, the successor State is a party or a contracting State to a treaty to which it has maintained reservations in conformity with guideline 5.1.1 or 5.1.2, objections to a reservation made by another contracting State or a contracting organization or by a State or an international organization party to the treaty shall not be maintained if the reservation is identical or equivalent to a reservation which the successor State itself has maintained.

### **5.2.3 [5.12] *Maintenance of objections to reservations of the predecessor State***

When a reservation formulated by the predecessor State is considered as being maintained by the successor State in conformity with guideline 5.1.1 or 5.1.2, any objection to that reservation formulated by another contracting State or State party or by a contracting organization or international organization party to the treaty shall be considered as being maintained in respect of the successor State.

### **5.2.4 [5.13] *Reservations of the predecessor State to which no objections have been made***

When a reservation formulated by the predecessor State is considered as being maintained by the successor State in conformity with guideline 5.1.1 or 5.1.2, a contracting State or State party or a contracting organization or international organization party to the treaty that had not objected to the reservation in respect of the predecessor State may not object to it in respect of the successor State, unless:

(a) the time period for formulating an objection has not yet expired at the date of the succession of States and the objection is made within that time period; or

(b) the territorial extension of the treaty radically changes the conditions for the operation of the reservation.

### **5.2.5 [5.14] *Capacity of a successor State to formulate objections to reservations***

1. When making a notification of succession establishing its status as a party or as a contracting State to a treaty, a newly independent State may, in the conditions laid down in the relevant guidelines of the Guide to Practice, object to reservations formulated by a contracting State or State party or by a contracting organization or international organization party to the treaty, even if the predecessor State made no such objection.

2. A successor State other than a newly independent State shall also have the capacity provided for in paragraph 1 when making a notification establishing its status as a party or as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but in respect of which the predecessor State was a contracting State.

3. The capacity referred to in the foregoing paragraphs shall nonetheless not be recognized in the case of treaties falling under guidelines 2.8.2 and 4.1.2.

### **5.2.6 [5.15] *Objections by a successor State other than a newly independent State in respect of which a treaty continues in force***

A successor State other than a newly independent State in respect of which a treaty continues in force following a succession of States may not formulate an objection to a reservation to which the predecessor State had not objected unless the time period for formulating an objection has not yet expired at the date of the succession of States and the objection is made within that time period.

## **5.3 *Acceptances of reservations and succession of States***

### **5.3.1 [5.16 bis] *Maintenance by a newly independent State of express acceptances formulated by the predecessor State***

When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty, it shall be considered

as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization unless it expresses a contrary intention within 12 months of the date of the notification of succession.

### **5.3.2 [5.17] *Maintenance by a successor State other than a newly independent State of the express acceptances formulated by the predecessor State***

1. A successor State, other than a newly independent State, in respect of which a treaty continues in force following a succession of States shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization.

2. When making a notification of succession establishing its status as a contracting State or as a party to a treaty which, on the date of the succession of States, was not in force for the predecessor State but to which the predecessor State was a contracting State, a successor State other than a newly independent State shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization unless it expresses a contrary intention within 12 months of the date of the notification of succession.

### **5.3.3 [5.18] *Timing of the effects of non-maintenance by a successor State of an express acceptance formulated by the predecessor State***

The non-maintenance, in conformity with guideline 5.3.1 or guideline 5.3.2, paragraph 2, by the successor State of the express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization.

## **5.4 *Interpretative declarations and succession of States***

### **5.4.1 [5.19] *Interpretative declarations formulated by the predecessor State***

1. A successor State should, to the extent possible, clarify its position concerning interpretative declarations formulated by the predecessor State. In the absence of any such clarification, a successor State shall be considered as maintaining the interpretative declarations of the predecessor State.

2. The preceding paragraph is without prejudice to situations in which the successor State has demonstrated, by its conduct, its intention to maintain or to reject an interpretative declaration formulated by the predecessor State.

31. The draft guidelines pertained to Part 5 of the Guide to Practice, dealing with reservations, objections to reservations, acceptances of reservations and interpretative declarations in relation to the succession of States. The texts originally proposed by the Special Rapporteur in his sixteenth report (A/CN.4/626 and Add.I) had been referred to the Drafting Committee by the Commission at its 3054th meeting. He paid a tribute to the Special Rapporteur, whose mastery of the subject and patient guidance had greatly facilitated the Drafting Committee's work, and thanked the members of the Committee for their active and effective participation and the Secretariat for its valuable assistance.

32. During the plenary debate, some members of the Commission had questioned the placement of the provision on newly independent States at the very beginning of Part 5 of the Guide to Practice, as the Special Rapporteur had proposed. In their opinion, that put too much emphasis on a type of succession that was more the exception than the rule and had been consigned to history after the end of the decolonization process. However, other members of the Commission had expressed their support for the approach taken by the Special Rapporteur. It had been

observed that a variety of legal issues were still likely to arise concerning reservations to treaties in relation to the succession of newly independent States. The point had also been made that it was justified to assign a prominent place to the draft guideline on newly independent States, since it reproduced article 20 of the 1978 Vienna Convention, the only provision that addressed the issue of reservations in relation to the succession of States.

33. The Drafting Committee had decided to retain the order of the draft guidelines proposed by the Special Rapporteur, with the understanding that the commentary would provide an explanation of the way in which the different types of succession regulated in the 1978 Vienna Convention—in particular, the distinction between automatic and non-automatic succession—were reflected in the draft guidelines. The commentary would also indicate that the draft guidelines would not revisit the rules governing the succession of States in respect of treaties.

34. The numbering of the draft guidelines provisionally adopted by the Drafting Committee differed from the numbering in the sixteenth report on the topic (A/CN.4/626 and Add.1). That was because the Drafting Committee, following a proposal by the Special Rapporteur, had divided the guidelines into four subsections dealing, respectively, with reservations, objections to reservations, acceptances of reservations and interpretative declarations. For each draft guideline, the original number was indicated in brackets.

35. The first text in section 5.1, which was entitled “Reservations and succession of States”, was draft guideline 5.1.1, entitled “Newly independent States”. In paragraphs 1 to 3, it reproduced the text of the 1978 Vienna Convention, replacing, as appropriate, the cross references to the articles of the 1969 Vienna Convention by cross references to the relevant provisions of the Guide to Practice. Except for the inclusion of an additional paragraph, the Drafting Committee had retained, with minor editorial changes, the formulation of the corresponding draft guideline 5.1 proposed by the Special Rapporteur.

36. Paragraph 1 of the draft guideline stated that a newly independent State that established its status as a party or as a contracting State to a treaty by a notification of succession was considered as maintaining any reservation to that treaty that had been applicable, on the date of the succession of States, to the territory to which the succession related, unless when making the notification of succession it expressed a contrary intention or formulated a reservation relating to the same subject matter as the reservation. Paragraph 2 recognized the right of a newly independent State to formulate a reservation when making its notification of succession unless that reservation was impermissible according to subparagraph (a), (b) or (c) of guideline 3.1 of the Guide to Practice. Paragraph 3 referred to the rules concerning the procedure for the formulation of a reservation as set out in Part 2 of the Guide to Practice.

37. Paragraph 4 was new. In response to a suggestion made in the plenary debate, it reproduced the definition of a “newly independent State” contained in article 2, paragraph 1 (f), of the 1978 Vienna Convention. The commentary would explain that the definition had been reproduced

in order to prevent any misunderstanding as to the meaning of the expression and because the distinction between newly independent States and successor States other than newly independent States was important for resolving the legal issues relating to reservations, objections to reservations and acceptances of reservations in relation to the succession of States.

38. Draft guideline 5.1.2 was entitled “Uniting or separation of States”. The Drafting Committee had retained the substance of the corresponding draft guideline 5.2, which had not been questioned during the plenary debate. However, the text had been restructured so as to deal in separate paragraphs with two distinct scenarios: on the one hand, cases in which succession to a treaty by a State arising from a uniting or separation of States took place *ipso jure* and, on the other hand, cases in which succession to the treaty required a notification by that State. Paragraphs 1 and 2 dealt with the first scenario and, for the sake of clarity, referred to a successor State that was a party to a treaty “as the result of” a uniting or separation of States. An appropriate explanation regarding the meaning of that phrase would be provided in the commentary. According to the relevant provisions of the 1978 Vienna Convention, in the event of a uniting or separation of States, succession took place *ipso jure* in respect of treaties which, at the date of the succession of States, had been in force for the predecessor State. It had been suggested, however, that the commentary should mention that, especially in cases of separation of States, the practice of States and depositaries in recognizing the automatic character of succession in respect of such treaties did not appear to be uniform.

39. Paragraph 1 enunciated the presumption that reservations were maintained unless the successor State expressed its intention not to maintain one or more reservations of the predecessor State at the time of the succession. That presumption was, however, subject to the provisions of draft guideline 5.1.3, which pointed out the irrelevance of certain reservations in cases involving a uniting of States. Since paragraph 1 of draft guideline 5.1.2, as redrafted by the Drafting Committee, referred only to those cases in which succession took place *ipso jure*, the reference to the hypothesis of the formulation of a reservation relating to the same subject matter had been omitted, because in such cases, the successor State was not entitled to formulate a new reservation, as was stated in paragraph 2. That point would be emphasized in the commentary.

40. In contrast, paragraph 3 referred to those cases in which, following a uniting or separation of States, succession to the treaty did not take place *ipso jure* but required a notification to that effect by the successor State. According to the relevant provisions of the 1978 Vienna Convention, such was the case for treaties which, at the date of the succession of States, had not been in force for the predecessor State but in respect of which the predecessor State was a contracting State. The presumption that the reservations were maintained was also applicable in those cases, since it applied to all successor States, including newly independent States, as indicated in draft guideline 5.1.1, paragraph 1. Since, in the cases envisaged in draft guideline 5.1.2, paragraph 3, the succession to the treaty did not take place *ipso jure*, the successor State could formulate a new reservation. Furthermore, if the reservation

formulated by the successor State related to the same subject matter as a reservation formulated by the predecessor State, the latter was not considered as maintained.

41. Draft guideline 5.1.2, paragraph 4, recalled the conditions for the formulation of a reservation pursuant to paragraph 3. For the sake of consistency with draft guideline 5.1.1, paragraph 2, and in response to a suggestion made during the plenary debate, the Drafting Committee had decided to add a reference to the conditions for the permissibility of a reservation set out in subparagraph (a), (b) or (c) of guideline 3.1 of the Guide to Practice.

42. Draft guideline 5.1.3, which corresponded to the Special Rapporteur's draft guideline 5.3, was entitled "Irrelevance of certain reservations in cases involving a uniting of States". The text adopted by the Drafting Committee was identical to the text presented by the Special Rapporteur, except for the replacement of the expression "State so formed" by the words "successor State".

43. Draft guideline 5.1.4, entitled "Establishment of new reservations formulated by a successor State", was new. During the plenary debate, it had been observed that the draft guidelines did not indicate the conditions under which a reservation formulated by a successor State was to be regarded as established. In response to that concern, the Drafting Committee had decided to include a new draft guideline making express reference to the general provisions relating to the establishment of a reservation contained in Part 4 of the Guide to Practice. It was felt that such a reference was appropriate in order to make it clear that a successor State that formulated a reservation found itself in the same position as any other reserving State or international organization regarding the establishment of that reservation, particularly with reference to the right of the other contracting States or contracting organizations to accept, or object to, the reservation formulated by the successor State. The Drafting Committee considered that the inclusion of the draft guideline rendered superfluous two provisions on related issues proposed by the Special Rapporteur, namely draft guideline 5.8 on the timing of the effects of a reservation formulated by a successor State and draft guideline 5.16 on objections to reservations of the successor State. Those draft guidelines had therefore been deleted.

44. Draft guideline 5.1.5, which corresponded to the original draft guideline 5.4, was entitled "Maintenance of the territorial scope of reservations formulated by the predecessor State". While the principle it enunciated had not been questioned in the plenary debate, it had nevertheless been suggested that the possibility for the successor State to express a contrary intention be recognized in the text. The Drafting Committee had decided to follow that suggestion and had added a phrase to that effect at the end of the draft guideline. The commentary would explain, however, that the rights and obligations of other contracting States or contracting organizations would not be affected, as such, by a declaration whereby the successor State extended the territorial scope of a reservation formulated by the predecessor State. As a result of that addition, the Drafting Committee had moved the proviso "subject to the provisions of guideline 5.1.6" to the beginning of the text, to make it easier to read.

45. Draft guideline 5.1.6, which corresponded to draft guideline 5.5 presented by the Special Rapporteur, had retained its original title, "Territorial scope of reservations in cases involving a uniting of States". During the plenary debate, some members of the Commission had drawn attention to the complexity of that draft guideline. After careful consideration, the Drafting Committee had concluded that the complexity was necessitated by the variety of scenarios that could arise, in the context of the uniting of States, regarding reservations and their territorial scope. The Drafting Committee had therefore only slightly modified the text proposed by the Special Rapporteur. The main changes concerned paragraphs 1 (a) and 2 (b) and were intended to draw attention to the fact that, under the relevant provisions of the 1978 Vienna Convention, the territorial scope of a treaty might be extended following the uniting of States only if the successor State made a notification to that effect. For that reason, the phrase "at the time of the extension of the territorial scope of the treaty" had been replaced, for greater clarity's sake, with the phrase "when making the notification extending the territorial scope of the treaty". Furthermore, in order to ensure consistency with the text of the other draft guidelines, throughout the text of the guideline the Drafting Committee had employed the phrase "following a uniting of two or more States" instead of "as a result of the uniting of two or more States".

46. A suggestion had been made in the Drafting Committee that the proviso contained in paragraph 1 (b) be included in paragraph 2 (a). The idea behind that suggestion was that the extension of the territorial scope of an identical reservation, as envisaged in paragraph 2 (a), could not occur if the "nature or purpose of the reservation is such that the reservation cannot be extended beyond the territory to which it was applicable at the date of the succession of States". After discussing the merits of that suggestion at length, the Drafting Committee had realized that the scenario in question could indeed occur when two or more States united. For example, it might be that, because of its nature and purpose, an identical reservation formulated by two of those States in respect of which the treaty had been in force at the date of the succession of States could not be extended to the part of the territory of the successor State which, prior to the uniting, had belonged to a third State in respect of which the treaty had not been in force at the date of the succession of States. The Drafting Committee had considered that, in order to avoid complicating further the text of the draft guideline, it would be sufficient to explain in the commentary that the nature and purpose of the reservation might, in certain situations, prevent the extension of the territorial scope of an identical reservation as envisaged in draft guideline 5.1.6, paragraph 2 (a).

47. Draft guideline 5.1.7 was entitled "Territorial scope of reservations of the successor State in cases of succession involving part of a territory". Since no change to the corresponding draft guideline 5.6 presented by the Special Rapporteur had been suggested during the plenary debate, the Drafting Committee had retained the text and title of the draft guideline as proposed by the Special Rapporteur.

48. Draft guideline 5.1.8, which corresponded to former draft guideline 5.7, was entitled "Timing of the effects

of non-maintenance by a successor State of a reservation formulated by a predecessor State”, as originally proposed. The Drafting Committee had again retained the text presented by the Special Rapporteur, including the cross references in brackets, which had received the support of some members of the Commission during the plenary debate, although they had been adjusted to agree with the renumbering of the draft guidelines. In order to align the text of the draft guideline with article 22, paragraph 3 (a), of the 1969 and 1986 Vienna Conventions, the word “only” had been inserted before the word “when” in the penultimate line. In order to further ensure consistency with the text of the 1986 Vienna Convention and the other guidelines, the expression “contracting international organization” had been replaced by “contracting organization”. The commentary would mention the role of the depositary in transmitting the relevant notification to the contracting States or contracting organizations.

49. Draft guideline 5.1.9, which corresponded to draft guideline 5.9 proposed by the Special Rapporteur, was entitled “Late reservations formulated by a successor State”. The Drafting Committee had decided to shorten the original title, but, as no modification had been suggested during the plenary debate, it had retained the text of the draft guideline as proposed by the Special Rapporteur.

50. Turning to the draft guidelines in section 5.2 entitled “Objections to reservations and succession of States”, Mr. Vázquez-Bermúdez said that draft guideline 5.2.1 was entitled “Maintenance by the successor State of objections formulated by the predecessor State”, as originally proposed. The Drafting Committee had retained most of the text of the corresponding draft guideline 5.10 presented by the Special Rapporteur, but it had adjusted the cross reference in the first line and deleted the word “international” between the words “contracting” and “organization” in order to be consistent with the terminology of the 1986 Vienna Convention and the text of the other draft guidelines. For the sake of clarity, the commentary would indicate that the presumption enunciated in draft guideline 5.2.1 would not apply if a successor State that did not succeed *ipso jure* to a treaty chose to become a contracting State, or a party, to that treaty through means other than by notifying its succession, for example by acceding to the treaty.

51. Draft guideline 5.2.2, entitled “Irrelevance of certain objections in cases involving a uniting of States”, corresponded to former draft guideline 5.11. Apart from adjusting the cross references in paragraph 2, removing the square brackets and replacing the expression “contracting international organization” with “contracting organization”, the Drafting Committee had not introduced any modifications to the text or title of the guideline, neither of which had elicited any comments during the plenary debate.

52. The title of draft guideline 5.2.3 was “Maintenance of objections to reservations of the predecessor State”. The Drafting Committee had adopted the text of draft guideline 5.12 proposed by the Special Rapporteur, but it had adjusted the cross references and deleted the word “international” between the words “contracting” and “organization”. It had decided to simplify the title of the draft guideline by deleting the phrase “formulated by another

State or international organizations”, which had been deemed superfluous.

53. Draft guideline 5.2.4 corresponded to former draft guideline 5.13. It was entitled “Reservations of the predecessor State to which no objections have been made”, as originally proposed. The main change introduced by the Drafting Committee was the inclusion, at the end of the text, of a subparagraph permitting an additional exception to the principle that a contracting State or contracting organization could not object to a reservation maintained by a successor State if it had not objected to it in respect of the predecessor State.

54. During the plenary debate, it had been argued that the solution retained in that draft guideline might be too rigid in the event of a uniting of States, since the significance for the other contracting States or contracting organizations of a reservation maintained by the successor State might change. It had therefore been suggested that, in such cases, a contracting State or a contracting organization should be allowed to object to the reservation, even if it had not done so in respect of the predecessor State. In the Drafting Committee, the Special Rapporteur had indicated that he was prepared to accept that suggestion, provided that the additional exception was limited to instances where, as a result of the extension of the treaty’s territorial scope following the uniting of States, the balance of the treaty would be compromised by a reservation maintained by the successor State. According to a different opinion expressed in the Drafting Committee, that potential difficulty seemed to be related to the extension of the territorial scope of the treaty, rather than of the reservation as such; hence there was no need to amend the text of the draft guideline. After careful consideration, the Drafting Committee had decided to include that additional exception but to formulate it in a restrictive manner. Accordingly, draft guideline 5.2.4, as provisionally adopted by the Drafting Committee, allowed for the formulation of an objection to a reservation maintained by the successor State to which the contracting State or contracting organization had not objected in respect of the predecessor State, not only if the time period for the formulation of an objection had not expired at the date of the succession of States, but also if the territorial extension of the treaty radically changed the conditions for the operation of the reservation. In order to make the draft guideline easier to understand, the Drafting Committee had thought it preferable to address the two different scenarios in separate subparagraphs (a) and (b).

55. The Drafting Committee had retained but adjusted the cross references and had replaced the expression “contracting international organization” with “contracting organization” and the phrase “shall not have the capacity to” with the more concise “may not” in the *chapeau*.

56. Draft guideline 5.2.5 corresponded to draft guideline 5.14 proposed by the Special Rapporteur. It was entitled, “Capacity of a successor State to formulate objections to reservations”, as originally proposed. The Drafting Committee had introduced only minor modifications to the text. In paragraph 1, the Drafting Committee had deemed the proviso “and subject to paragraph 3 of the present guideline” superfluous and had deleted it. For

the sake of consistency with the terminology of the 1986 Vienna Convention, the term “contracting international organization” had once again been replaced by “contracting organization”. At the end of paragraph 3, the Drafting Committee had inserted the number of the guideline that reproduced the language of article 20, paragraph 2, of the 1969 and 1986 Vienna Conventions.

57. Draft guideline 5.2.6, the last in that section, was entitled “Objections by a successor State other than a newly independent State in respect of which a treaty continues in force”, as originally proposed. The Drafting Committee had merely replaced the phrase “shall not have the capacity to” with the more succinct wording “may not” and had otherwise kept the text of the original draft guideline 5.15, to which no amendments had been suggested during the plenary debate.

58. Turning to the draft guidelines in section 5.3, “Acceptances of reservations and succession of States”, he said that draft guideline 5.3.1 had retained the original title, “Maintenance by a newly independent State of express acceptances formulated by the predecessor State”. Apart from the deletion of the word “international” before “organization” in the penultimate line in order to secure consistency with the terminology of the 1986 Vienna Convention, the Drafting Committee had retained the text of the corresponding draft guideline 5.16 *bis*, as presented by the Special Rapporteur, to which no changes had been proposed during the plenary debate.

59. Draft guideline 5.3.2 was entitled “Maintenance by a successor State other than a newly independent State of the express acceptances formulated by the predecessor State”, as originally proposed. The Drafting Committee had introduced only minor changes to the corresponding draft guideline 5.17 presented by the Special Rapporteur. In the English text, the phrase “for which a treaty remains in force” in paragraph 1 had been altered to “in respect of which a treaty continues in force” in order to follow the wording of the 1978 Vienna Convention, and the expression “contracting party” in paragraph 2 had been replaced by “contracting State” in order to align it more closely with the French text. As in other draft guidelines, the expression “contracting international organization” had been amended to “contracting organization” in paragraphs 1 and 3.

60. Draft guideline 5.3.3 was entitled “Timing of the effects of non-maintenance by a successor State of an express acceptance formulated by the predecessor State”, as originally proposed. Since the corresponding draft guideline 5.18 presented by the Special Rapporteur had been well received by the plenary Commission, the Drafting Committee had made only minor changes to its text. For the sake of consistency with other draft guidelines, the phrase “in accordance with” had been replaced by “in conformity with” in the first line and the term “contracting international organization” had been altered to “contracting organization”. In the English text, in order to align the wording with that of draft guideline 5.1.8, the phrase “shall take effect for” had been amended to “becomes operative in relation to” and the clause “when that State or that organization has received the notification thereof” had been replaced by “only when notice of it has been received by that State or that organization”. The

cross references had been retained and brought into line with the renumbering of the draft guidelines.

61. The last section of Part 5 of the Guide to Practice, entitled “Interpretative declarations and succession of States”, comprised only one provision, namely draft guideline 5.4.1, which corresponded to draft guideline 5.19 proposed by the Special Rapporteur and was entitled “Interpretative declarations formulated by the predecessor State”. During the plenary debate, it had been suggested that the text proposed by the Special Rapporteur be supplemented by the enunciation of a presumption that a successor State, in the absence of any clarification on its part, should be considered as maintaining the interpretative declarations of its predecessor State. The Drafting Committee had followed that suggestion, which had been accepted by the Special Rapporteur. A sentence to that effect had therefore been added to paragraph 1 of the draft guideline. As a result of that addition, the Drafting Committee had considered that the provision should have a broader title than that originally proposed. For that reason, the words “clarification of the status of” had been omitted from the title, which therefore referred in general terms to interpretative declarations formulated by the predecessor State.

62. He hoped that the Commission would find that it could provisionally adopt the draft guidelines presented by the Drafting Committee.

63. The CHAIRPERSON invited Commission to proceed to adopt the draft guidelines contained in document A/CN.4/L.760/Add.2.

Draft guidelines 5.1.1 to 5.4.1

*Draft guidelines 5.1.1 to 5.4.1 were adopted.*

64. The CHAIRPERSON said he took it that the Commission wished to adopt the report of the Drafting Committee on reservations to treaties contained in document A/CN.4/L.760/Add.2 as a whole.

*The report of the Drafting Committee on reservations to treaties contained in document A/CN.4/L.760/Add.2, as a whole, was adopted.*

*The meeting rose at 11.30 a.m.*

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## 3062nd MEETING

*Friday, 9 July 2010, at 10 a.m.*

*Chairperson:* Mr. Nugroho WISNUMURTI

*Present:* Mr. Al-Marri, Mr. Caffisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Perera, Mr. Saboia, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Sir Michael Wood.

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