Document:
A/CN.4/3109

Summary record of the 3109th meeting

Topic:
Draft report of the International Law Commission on the work of its sixty-third session

Extract from the Yearbook of the International Law Commission:
2011, vol. I
24. With respect to the topic of migration, the IAJC had taken up the issue because the State of Arizona in the United States of America had adopted a law on immigration. Fears had been expressed that the law was discriminatory, but after considering the matter the IAJC had concluded that all immigrants were treated in the same way, that no particular group was targeted and that, therefore, the text did not involve any discrimination.

25. Mr. CANDIOTI said he agreed with Mr. Vargas Carreño that coordination between the IAJC and the Commission should be improved and, to that end, it would be useful for a member of the Commission to be able to inform the IAJC annually of the work it had undertaken. Noting that the Working Group on the long-term programme of work, which he chaired, had the task of recommending new topics for inclusion in the long-term programme of work of the Commission, he said he would like to know the Committee’s opinion in that regard and which topics it thought that the Commission should consider for codification or progressive development. He also looked forward to hearing the Committee’s reaction to the Guide to Practice on Reservations to Treaties, which the Commission would forward to it after the Guide had been adopted at the current session.

26. Mr. VÁZQUEZ-BERMÚDEZ, noting that the IAJC was undertaking work on cultural diversity in the development of international law, recalled that in 2005 UNESCO had adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Although the Convention had been adopted only recently, it was a clear success, since 117 States had already ratified it. He wondered what contribution the IAJC intended to make in that regard, for example, whether it was planning to promote accession to the Convention or to help States to enact appropriate legislation for its implementation.

27. Ms. LINDSAY (Inter-American Juridical Committee) said that the topic of cultural diversity in the development of international law was being considered in depth by the Committee, and that, as work was still ongoing, the Committee had not yet identified the ultimate objectives.

Paragraphs (1) and (2) were adopted.

Paragraphs (4) to (7) were adopted.

Paragraph (8) was adopted.

Paragraph (9) was adopted.

Paragraph (10) was adopted.

Paragraph (11) to (14) were adopted.

The commentary to guideline 1.4, as amended, was adopted.

Paragraphs (1) and (2) were adopted.

* Resumed from the 3106th meeting.
Paragraph (3)

4. Mr. NOLTE proposed that, in the second sentence, the word “definition” be replaced with “assessment” since the user did not define the statements concerned but rather assessed them.

Paragraph (3), as amended, was adopted.

Paragraphs (4) to (12)

Paragraphs (4) to (12) were adopted.

Paragraph (13)

5. The CHAIRPERSON said, in response to a question from Mr. Candioti concerning mistakes in the paragraph numbering in the French and Spanish texts, that the secretariat would ensure the consistency of paragraph numbering between the various language versions of the Guide to Practice and of the corresponding cross references to paragraphs of the commentary. She suggested that the Commission continue its consideration of the paragraphs to the commentary based on the correct numbering used in the English text.

It was so decided.

Paragraph (13) was adopted.

Paragraphs (14) to (18)

Paragraphs (14) to (18) were adopted.

Paragraph (19)

6. Mr. NOLTE proposed that, in the first sentence, the word “pretext” should be replaced with a more appropriate expression to signify that the authors of the declarations in question used the treaty in an opportunistic fashion.

Paragraph (19) was adopted, subject to the requisite editorial amendments.

The commentary to guideline 1.5, as amended, was adopted.

1.5.1 Statements of non-recognition

Guideline 1.5.1 was adopted.

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

7. Mr. NOLTE pointed out that, in the first and third sentences, the words “the Federal Republic of” should be inserted before each of the two references to “Germany”.

Paragraph (3), as amended, was adopted.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were adopted.

Paragraph (6)

8. Mr. McRAE proposed that the reference to the adverb “[sic]” in the citation be deleted, unless it was part of the original, given that the text that preceded it was not erroneous.

Paragraph (6), as amended, was adopted.

Paragraphs (7) to (13)

Paragraphs (7) to (13) were adopted.

The commentary to guideline 1.5.1, as amended, was adopted.

1.5.2 Statements concerning modalities of implementation of a treaty at the internal level

Guideline 1.5.2 was adopted.

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

Paragraph (6)

9. Mr. McRAE proposed that, in the final sentence, the word “true” be replaced with “simple”, because the text that followed that word defined the declaration in question as a declaration “explaining how Sweden understands the treaty”, which corresponded to a simple declaration. Moreover, if the word “true” was retained, it would not be clear whether what was meant was a “simple” or a “conditional” interpretative declaration.

Paragraph (6), as amended, was adopted.

Paragraph (7)

10. Mr. NOLTE proposed that, in the first sentence, the words “cannot and” before “do not purport to have any international effects” be deleted. Informative declarations—although they did not purport to produce any international effect—could nonetheless produce an effect indirectly. It was therefore incorrect to assert that they could not have an effect.

Paragraph (7), as amended by Mr. Nolte and Mr. Pellet, was adopted.

Paragraphs (8) to (12)

Paragraphs (8) to (12) were adopted.

The commentary to guideline 1.5.2, as amended, was adopted.

1.5.3 Unilateral statements made under a clause providing for options

Guideline 1.5.3 was adopted.
Commentary
Paragraphs (1) to (19) were adopted.

Paragraph (20)

12. Mr. PELLET (Special Rapporteur) proposed inserting a footnote at the end of the second sentence in order to illustrate the text in parentheses immediately preceding it. The new footnote would read: “See guidelines 2.3.4 (Widening of the scope of a reservation), 2.5.10 (Partial withdrawal of a reservation) and 2.5.11 (Effect of a partial withdrawal of a reservation) and commentaries.”

Paragraph (20), as amended and supplemented, was adopted.

Paragraph (21)

Paragraph (21) was adopted.

The commentary to guideline 1.5.3, as amended, was adopted.

1.6 Unilateral statements in respect of bilateral treaties
Commentary
Paragraphs (1) and (2)

13. Mr. NOLTE proposed that, in the second sentence of paragraph (1) and in the first sentence of paragraph (2), the word “individual” before “definitions” be replaced with “different”.

14. Sir Michael WOOD said that the French phrase “des éléments de définitions” to which Mr. Nolte’s proposal had referred could be rendered in English as simply “definitions” and did not require any adjective. He therefore proposed to delete the word “individual” in both paragraphs.

Paragraphs (1) and (2), as amended by Sir Michael, were adopted.

Paragraph (3)

Paragraph (3) was adopted.

The commentary to section 1.6, as amended, was adopted.

1.6.1 “Reservations” to bilateral treaties
Commentary
Paragraphs (1) to (19)

Paragraphs (1) to (19) were adopted.

Paragraph (20)

15. Mr. PELLET (Special Rapporteur) proposed that, in the first sentence, the phrase “most of the members of” [la plupart des membres de] be deleted. The sentence would then begin: “Although the Commission considers …” [Bien que la Commission considère …].

16. Mr. McRAE proposed that the phrase “within the scope of the treaty” be replaced by “within the scope of the Guide to Practice”.

Paragraph (20), as amended, was adopted.

The commentary to guideline 1.6.1, as amended, was adopted.

1.6.2 Interpretative declarations in respect of bilateral treaties
Guideline 1.6.2 was adopted.
Commentary
Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

17. Mr. NOLTE proposed that, in the first sentence, the phrase “where principles are concerned” be replaced by “of principle”.

18. Mr. PELLET (Special Rapporteur) pointed out that, in the first footnote to the last sentence, the paragraph number to which reference was made should be paragraph (9), not paragraph (7).

Paragraph (2), as amended by Mr. Nolte and Mr. Pellet, was adopted.

Paragraphs (3) to (9)

Paragraphs (3) to (9) were adopted.

The commentary to guideline 1.6.2, as amended, was adopted.

1.6.3 Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party
Guideline 1.6.3 was adopted.
Commentary
Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

19. Mr. NOLTE proposed that in the first sentence the phrase “becomes an integral part of the treaty and” be deleted, thereby limiting the Commission to what was a safer assertion, namely, that when an interpretative declaration made in respect of a bilateral treaty was accepted by the other party, it constituted the authentic interpretation thereof. In addition, in the fifth sentence the phrase “which forms part of its context” should be deleted.

20. Sir Michael WOOD proposed that, in the fifth sentence, the phrase “paragraph 2 and 3 (a)” be amended to read “paragraph 2 or 3 (a)”.

Paragraph (2), as amended, was adopted.
Paragraph (3)

Paragraph (3) was adopted.

The commentary to guideline 1.6.3, as amended, was adopted.

1.7 Alternatives to reservations and interpretative declarations

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to section 1.7 was adopted.

1.7.1 Alternatives to reservations

Guideline 1.7.1 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

21. Mr. McRAE questioned the need for the adjective “worrisome” in the phrase “at the cost of worrisome terminological confusion” in the last footnote and proposed its deletion.

Paragraph (2) was adopted with that amendment.

Paragraph (3)

Paragraph (3) was adopted.

Paragraph (4)

22. Mr. McRAE said that the last three words of the paragraph, “from one another”, seemed unnecessary and proposed their deletion.

Paragraph (4), as amended, was adopted.

Paragraph (5)

Paragraph (5) was adopted.

Paragraph (6)

23. Mr. PELLET (Special Rapporteur), referring to the third footnote, said that in the first sentence of the French version the words “qu’elle rencontre” should be replaced by “qu’ils rencontrent”.

24. Mr. McRAE proposed that in the fourth sentence of the same footnote, the words “regulated but not abolished by” should be replaced by “expanded on it”.

Paragraph (6), as amended, was adopted.

Paragraphs (7) to (9)

Paragraphs (7) to (9) were adopted.

Paragraph (10)

25. Mr. PELLET (Special Rapporteur) said that the first sentence, which stated that it did not seem useful to mention other alternative procedures, was not in line with the text of the guideline as amended by the Working Group on reservations to treaties, which did, in fact, mention several alternative procedures. He therefore proposed that the sentence be redrafted to read: “There are other alternative procedures that are even further removed from the reservations procedure” [D’autres procédés alternatifs s’éloignent plus encore du procédé des réserves].

Paragraph (10), as amended, was adopted.

Paragraph (11)

26. Mr. PELLET (Special Rapporteur) said that, for similar reasons, the last sentence should be redrafted to read: “There is therefore no likelihood of serious confusion between such notifications and reservations” [Il n’existe dès lors aucun risque de confusion sérieux entre ces notifications, d’une part, et les réserves, d’autre part].

Paragraph (11), as amended, was adopted.

Paragraph (12)

27. Mr. PELLET (Special Rapporteur) said that, for similar reasons, the first sentence of paragraph (12) would need to be redrafted to begin: “Two other procedures that may also be considered alternatives to reservations purport (or may purport) to modify the effects of a treaty” [Deux autres procédés, que l’on peut également considérer comme des alternatives aux réserves visent (ou peuvent viser) à moduler les effets d’un traité].

Paragraph (12), as amended, was adopted.

Paragraph (13)

Paragraph (13) was adopted.

Paragraph (14)

28. Mr. PELLET (Special Rapporteur) said that, for the sake of accuracy, the first sentence of the penultimate footnote should refer to a similarity, not a difference, and should read: “Pierre-Henri Imbert gives two examples that highlight this fundamental similarity, by comparing” [Imbert donne deux exemples qui font bien ressortir cette similitude essentielle, en comparant].

Paragraph (14) was adopted with that amendment.

Paragraph (15)

29. Mr. McRAE said that he questioned the accuracy of the phrase in the second sentence “yet authors, including the most distinguished among them, have caused an unwarranted degree of confusion”. The footnote that followed made no reference to such confusion in the literature but instead to a dissenting opinion by Judge Zoričić in the Ambatielos case, cited by Sir Gerald Fitzmaurice.345 He therefore proposed that the phrase in

question should read “yet there is still an unwarranted degree of confusion”.

Paragraph (15), as amended, was adopted.

Paragraphs (16) to (20) were adopted.

Paragraph (21)

30. Mr. NOLTE queried the appropriateness of referring by name to the author of the explanatory report (C. N. Fragistas) in the body of the document.

31. Mr. PELLET (Special Rapporteur) said it was important to refer to the name of the author somewhere in the document, since he was the sole author of the explanatory report in question. He proposed that the name of the author be moved from paragraph (21) to the related footnote.

Paragraph (21), as amended, was adopted.

Paragraphs (22) to (24) were adopted.

The commentary to guideline 1.7.1, as amended, was adopted.

1.7.2 Alternatives to interpretative declarations

Guideline 1.7.2 was adopted.

Commentary

Paragraphs (1) to (3) were adopted.

Paragraph (4)

32. Mr. PELLET (Special Rapporteur) proposed that, in the last footnote to paragraph (4), reference should be made to paragraph (21) as well as paragraph (20) of the commentary to guideline 1.7.1.

Paragraph (4) was adopted with that amendment.

Paragraph (5)

Paragraph (5) was adopted.

The commentary to guideline 1.7.2, as amended, was adopted.

1.8 Scope of definitions

Guideline 1.8 was adopted.

Commentary

Paragraph (1)

33. Mr. NOLTE said that it did not seem necessary to provide the somewhat old-fashioned explanation of the term “definition”. He therefore proposed deleting the opening phrase of the second sentence: “As ‘a precise statement of the essential nature of a thing’”.

34. Mr. FOMBA pointed out that the related footnote would then also need to be deleted.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (5) were adopted.

The commentary to guideline 1.8, as amended, was adopted.

35. The CHAIRPERSON invited the Commission to consider the portion of chapter IV contained in document A/CN.4/L.783/Add.4.

2. Procedure (A/CN.4/L.783/Add.4)

2.1 Form and notification of reservations

2.1.1 Form of reservations

Guideline 2.1.1 was adopted.

Commentary

Paragraphs (1) to (11) were adopted.

The commentary to guideline 2.1.1 was adopted.

2.1.2 Statement of reasons for reservations

Guideline 2.1.2 was adopted.

Commentary

Paragraphs (1) and (2) were adopted.

Paragraph (3)

36. Mr. NOLTE proposed that in the first part of the second sentence the phrase “making it a legal obligation” should be replaced by “recognizing it as a legal obligation”, since the Commission could not in any case make it a legal obligation to give reasons for reservations but could have recognized it as such. The second half of the sentence would then become superfluous and could be deleted.

37. Mr. McRAE said that the Commission could do rather more than recognize something as a legal obligation. He therefore proposed using the term “expressing” so that the sentence would read: “It was for this reason that the Commission deemed it useful to encourage giving reasons without expressing it as a legal obligation to do so.”

Paragraph (3), as amended, was adopted.

Paragraph (4)

Paragraph (4) was adopted.

Paragraph (5)

38. Mr. PELLET (Special Rapporteur) said that in the last sentence the word “indispensable” was too strong and
should be replaced by “central”. The sentence would thus read: “It is a central element of the reservations dialogue” [Elle est un élément central au dialogue réservataire].

Paragraph (5), as amended, was adopted.

Paragraphs (6) to (10)

Paragraphs (6) to (10) were adopted.

The commentary to guideline 2.1.2, as amended, was adopted.

2.1.3 Representation for the purpose of formulating a reservation at the international level

Guideline 2.1.3 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

39. Mr. PELLET (Special Rapporteur) said that, as currently worded, the first sentence of the paragraph made little sense. He proposed that it read “The two Vienna Conventions of 1969 and 1986 contain no particular explanation of persons or organs authorized to formulate reservations at the international level” [Les deux Conventions de Vienne de 1969 et de 1986 ne comportent aucune précision particulière en ce qui concerne les personnes ou organes habilités à formuler une réserve au plan international].

Paragraph (2), as amended, was adopted.

Paragraphs (3) to (11)

Paragraphs (3) to (11) were adopted.

Paragraph (12)

40. Mr. McRAE proposed the deletion of the adjective “recent” before the mention of the Aerial Incident of 10 August 1999 case in the related footnote, since the case was no longer recent.

Paragraph (12) was adopted with that amendment.

Paragraphs (13) to (18)

Paragraphs (13) to (18) were adopted.

The commentary to guideline 2.1.3, as amended, was adopted.

2.1.4 Absence of consequences at the international level of the violation of internal rules regarding the formulation of reservations

Guideline 2.1.4 was adopted.

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

Paragraph (6)

41. Mr. McRAE, referring to the adverb “regrettably” in the second sentence of the first footnote to the paragraph, questioned the need to express regret that the European Community had not replied to the Commission’s questionnaire. Surely a statement of fact would suffice.

42. Mr. PELLET (Special Rapporteur) said that, in his view, it had been necessary to express regret; however, the statement was no longer accurate because one European body—the Council of the European Community—had replied. He therefore proposed that the sentence should be reworded: “As far as the European Community was concerned, only the Council replied to the Commission’s questionnaire” [En ce qui concerne la Communauté européenne, seul le Conseil a répondu au questionnaire de la Commission].

Paragraph (6) was adopted with that amendment.

Paragraphs (7) to (9)

Paragraphs (7) to (9) were adopted.

Paragraph (10)

43. Mr. NOLTE said that the last sentence was overly categorical when it stated that the internal rules on competence for formulating reservations were not laid down in constitutions. He therefore suggested that the word “usually” be inserted before the phrase “not the case”. He also took issue with the phrase “which derives from practice”, because most constitutional lawyers in Germany and probably those in many other countries would not accept that the rules laying down who was competent to formulate reservations on behalf of the State derived only from practice. In fact, in most cases, they stemmed from constitutional principles regarding the separation of powers in combination with practice. He therefore suggested that the phrase read “which mostly derives from general constitutional principles and practice” and end with a full stop, and that what followed should be a new sentence to read: “Such rules are not necessarily in line with those expressing consent to be bound.”

44. Sir Michael WOOD said that in the United Kingdom it was not even true to say that the internal rules on competence to conclude treaties were laid down in the constitution.

45. Mr. McRAE, responding to Sir Michael’s concern, said that the word “often” could be inserted before the phrase “laid down in the constitution”.

46. Mr. PELLET (Special Rapporteur) said that the commentary could not state that the rules concerning the formulation of reservations derived from general constitutional principles and practice, since in France they derived only from practice.

47. Mr. PETRIČ and Mr. SABOIA endorsed Mr. Nolte’s viewpoint, since in their countries the rules governing the approval of treaties and the formulation of reservations thereto did derive from general constitutional principles.
48. Mr. FOMBA agreed with Mr. Pellet, since in many French-speaking African countries practice was the only source of the rules in question. For that reason, he suggested that the phrase in question should read “which mostly derives from general constitutional principles or practice”.

49. Mr. KEMICHA said that the words “which mostly derives from” would make it possible to take account of the constitutional particularities of many different countries. That phrase allowed for the fact that, in some jurisdictions, constitutional provisions could require that another organ must examine whether reservations formulated by the executive were consistent with the constitution.

50. Mr. PETRIČ and Mr. NOLTE agreed with the wording proposed by Mr. Fomba.

51. The CHAIRPERSON said she took it that the Commission wished to divide the last sentence of paragraph (10) into two, reading as follows: “ Whereas the internal rules on competence to conclude treaties are often laid down in the constitution, at least in broad outline, that is usually not the case for the formulation of reservations, which mostly derives from general constitutional principles or practice. Such rules are not necessarily in line with those expressing consent to be bound.”

Paragraph (10), as amended, was adopted.

Paragraphs (11) to (13) were adopted.

The commentary to guideline 2.1.4, as amended, was adopted.

2.1.5 Communication of reservations

Guideline 2.1.5 was adopted.

Commentary

Paragraphs (1) to (7) were adopted.

Paragraph (8) was adopted with a minor drafting change.

Paragraph (9)

52. Mr. NOLTE said that, for the sake of consistency, the names of individual members of State delegations should not be mentioned and that the beginning of the paragraph should therefore read: “At the United Nations Conference on the Law of Treaties, Canada pointed out that …”.

Paragraph (9), as amended, was adopted.

Paragraph (10) was adopted with minor drafting changes.

Paragraphs (11) to (27) were adopted.

Paragraph (28)

53. Mr. NOLTE said that the fourth sentence, “The Commission does not intend to take a position on the matter and decided not to devote a specific guideline to it”, should be deleted in order to make it clear the Commission considered that the same rule should apply in a situation to which it did not devote a specific guideline.

54. Mr. PELLET (Special Rapporteur) said that deleting that sentence would not be wise. Unfortunately, the Commission had not wished to adopt a guideline on the situation in which certain treaties, especially in the field of disarmament or environmental protection, created deliberative bodies with a secretariat which was sometimes denied the status of an international organization. The sentence that followed the one that Mr. Nolte wished to delete was not incompatible with that point, since it concerned a different matter, namely reservations to treaties creating oversight bodies.

55. Mr. NOLTE said that the idea behind the latter part of the paragraph needed to be expressed more clearly. He therefore suggested that consideration of that paragraph should be deferred in order to give the Special Rapporteur time to reformulate it.

56. The CHAIRPERSON suggested that the Commission should defer its consideration of paragraph (28).

It was so decided.

Paragraph (29) was adopted.

Paragraph (30)

57. Mr. PELLET (Special Rapporteur) said that the second clause in the second sentence, “the Commission proposes to decide on the matter after it undertakes an in-depth study of whether or not it is possible to object to a reservation that is expressly provided for in a treaty”, no longer applied and should be deleted; instead, a footnote should be added which would read: “See guideline 2.8.12 and commentary”.

Paragraph (30), as amended and supplemented with a footnote, was adopted.

Paragraphs (31) and (32) were adopted.

2.1.6 Procedure for communication of reservations

Guideline 2.1.6 was adopted.

Commentary

Paragraphs (1) to (11) were adopted.
58. Mr. PELLET (Special Rapporteur) said that the expression “could rely on” [pourrait se reposer sur], should be replaced with “might leave it up to” [pourrait se décharger sur].

Paragraph (12), as amended, was adopted.

Paragraphs (13) to (25)

Paragraphs (13) to (25) were adopted.

The commentary to guideline 2.1.6, as amended, was adopted.

2.1.7 Functions of depositaries

Guideline 2.1.7 was adopted.

Commentary

Paragraph (1)

59. Mr. NOLTE said that the meaning of the final sentence was unclear. He proposed replacing the phrase “performs this transition” with “makes this clear”.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (14)

Paragraphs (2) to (14) were adopted.

The commentary to guideline 2.1.7, as amended, was adopted.

2.2 Confirmation of reservations

2.2.1 Formal confirmation of reservations formulated when signing a treaty

Guideline 2.2.1 was adopted.

Commentary

Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted.

Paragraph (8)

60. Mr. PELLET (Special Rapporteur) said that the second footnote to the paragraph should indicate that the publication entitled Multilateral Treaties Deposited with the Secretary-General was available online.

Paragraph (8), with that amendment, was adopted.

Paragraphs (9) to (15)

Paragraphs (9) to (15) were adopted.

The commentary to guideline 2.2.1, as amended, was adopted.

2.2.2 Instances of non-requirement of confirmation of reservations formulated when signing a treaty

Guideline 2.2.2 was adopted.

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to guideline 2.2.2 was adopted.

2.2.3 Reservations formulated upon signature when a treaty expressly so provides

Guideline 2.2.3 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.2.3 was adopted.

2.2.4 Form of formal confirmation of reservations

Guideline 2.2.4 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.2.4 was adopted.

2.3 Late formulation of reservations

Guideline 2.3 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted with minor drafting changes.

Paragraph (4)

61. Mr. PELLET (Special Rapporteur) said that, in the last footnote to the paragraph, which referred to the Convention on Mutual Administrative Assistance in Tax Matters, the phrase “it seems that no State party has exercised the option envisaged in this provision” was inaccurate and should be deleted.

Paragraph (4), with that amendment, was adopted.

Paragraph (5)

Paragraph (5) was adopted.

Paragraph (6)

Paragraph (6) was adopted with a minor drafting change.

Paragraphs (7) to (9)

Paragraphs (7) to (9) were adopted.

Paragraph (10)

62. Mr. NOLTE expressed concern that the combination of paragraph (10) and the footnote added in brackets to the
quote by F. Horn seemed to imply that it was possible to denounce a treaty and reaccede to it in order to formulate a reservation even if the treaty had no withdrawal clause.

63. Mr. PELLET (Special Rapporteur) said that he was simply noting what had happened in practice, as indicated, for example, in paragraph (14), which was the correct reference in the above-mentioned footnote, not paragraph (13).

64. Mr. NOLTE said that the Special Rapporteur seemed, on the basis of a single precedent, to be casting doubt on the general rule contained in the Vienna Conventions that a treaty that had no denunciation clause could not be denounced.

65. Mr. PELLET (Special Rapporteur) said that the portion of the quotation in paragraph (10) that stated “A party remains always at liberty to accede anew to the same treaty” was nuanced by the footnote added in brackets, which explained that the quotation referred to a particular treaty; the footnote went on to refer the reader to paragraph (14), which provided a somewhat different example.

66. Sir Michael WOOD said that Mr. Nolte had drawn attention to a disturbing paragraph. Perhaps the problem lay with the opening words of paragraph (10), which were ambiguous. The apparent impact of the paragraph could be limited if the first sentence were amended so as to make it clear that the possibility in question was the unanimous acceptance of a late reservation.

67. Mr. PELLET (Special Rapporteur) said that the paragraph reflected views expressed in the literature with which he agreed, namely, that the parties could always modify a treaty by unanimous consent.

68. Mr. NOLTE said that the problem lay not with the views reproduced in the paragraph but rather with the Special Rapporteur’s point made in the footnote indicating that treaties that contained no withdrawal clause could be denounced.

69. The CHAIRPERSON suggested that the adoption of paragraph (10) should be deferred until an alternative text had been drafted.

It was so decided.

Paragraphs (11) and (12)

Paragraphs (11) and (12) were adopted.

Paragraphs (13) and (14)

70. Mr. NOLTE said that paragraphs (13) and (14) were related to paragraph (10). He therefore proposed that the Commission should defer their consideration.

It was so decided.

71. Mr. NOLTE proposed replacing the phrase “A pamphlet published by the Council of Europe” with “A publication by the Council of Europe”, which was a more appropriate description of the document in question.

Paragraph (17), as amended, was adopted.

Paragraphs (18) and (19)

Paragraphs (18) and (19) were adopted.

Paragraph (20)

72. Mr. NOLTE asked the Special Rapporteur to clarify the meaning of the phrase “unless a single opposition renders the reservation impossible” in the third sentence.

73. Mr. PELLET (Special Rapporteur) said that it meant that it rendered the formulation of the reservation impossible. He proposed amending the wording accordingly.

Paragraph (20), as amended, was adopted.

Paragraph (21)

Paragraph (21) was adopted.

Paragraph (22)

74. Mr. NOLTE proposed that, for the sake of clarity, the word “not” in the phrase “should not have a choice” should be replaced with “only”.

Paragraph (22), as amended, was adopted.

Paragraphs (23) and (24)

Paragraphs (23) and (24) were adopted.

2.3.1 Acceptance of the late formulation of a reservation

Guideline 2.3.1 was adopted.

Commentary

Paragraphs (1) to (12)

Paragraphs (1) to (12) were adopted.

The commentary to guideline 2.3.1 was adopted.

2.3.2 Time period for formulating an objection to a reservation that is formulated late

Guideline 2.3.2 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 2.3.2 was adopted.

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2.3.3 Limits to the possibility of excluding or modifying the legal effect of a treaty by means other than reservations

Guideline 2.3.3 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

75. Mr. NOLTE proposed that, in the third sentence, the words “of Human Rights” should be inserted after the words “the European Commission” so as to avoid any misunderstanding.

Paragraph (5), as amended, was adopted.

Paragraphs (6) and (7)

76. Mr. NOLTE said that, although he understood that the other decisions mentioned in the commentary supported the point being made, he did not understand the relevance of the Loizidou judgment in that regard. He therefore proposed deleting paragraph (6). He also proposed amending paragraph (7) to include a reference to the European Commission of Human Rights.

77. The CHAIRPERSON suggested that the Commission might wish to defer consideration of those paragraphs.

It was so decided.

The meeting rose at 1 p.m.

3110th MEETING

Friday, 22 July 2011, at 10 a.m.

Chairperson: Ms. Marie G. JACOBSSON (Vice-Chairperson)

Later: Mr. Bernd H. NIEHAUS (Vice-Chairperson)

Present: Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Kemicha, Mr. Melescanu, Mr. Murase, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Draft report of the International Law Commission on the work of its sixty-third session (continued)

Chapter IV. Reservations to treaties (continued) (A/CN.4/L.783 and Add.1–8)

1. The CHAIRPERSON invited the Commission to resume its consideration of the portion of chapter IV of its draft report contained in document A/CN.4/L.783/Add.4.

F. Text of the Guide to Practice on reservations to treaties, adopted by the Commission at its sixty-third session (continued)

2. Text of the Guide to Practice, comprising an introduction, the guidelines and commentaries thereto, an annex on the reservations dialogue and a bibliography (continued)

(b) Text of the guidelines and the commentaries thereto (A/CN.4/L.783/Add.4)

2.3.3 Limits to the possibility of excluding or modifying the legal effect of a treaty by means other than reservations (continued)

Commentary (continued)

Paragraph (7) (concluded)

2. Mr. NOLTE recalled that at the previous meeting, he had suggested deleting paragraph (6), which would mean that the reference in paragraph (7) to the European Court of Human Rights would have to be deleted.

3. The CHAIRPERSON said that paragraph (6), which was the subject of another proposal, would be examined, like paragraph (7), at the same time as the other paragraphs still pending.

Paragraph (8)

Paragraph (8) was adopted.

2.3.4 Widening of the scope of a reservation

Guideline 2.3.4 was adopted.

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

4. Mr. NOLTE proposed replacing the words “extensive changes” by “extensions”.

5. Sir Michael WOOD said that it would be preferable to replace the phrase “extensive changes to the scope” by “changes that widen the scope”.

Paragraph (3), as amended, was adopted.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were adopted.

Paragraph (6)

6. Sir Michael WOOD suggested deleting the phrase “in other words, to modify in its favour the legal effect of the provisions of the treaty to which the reservation refers”, because paragraph (13) of the commentary contained a more complete definition of the phrase “widening the scope of a reservation”.

Paragraph (6), as amended, was adopted.

Paragraph (7)

Paragraph (7) was adopted.