Document:
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Summary record of the 3110th meeting

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

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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._

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**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. Vascianinnie, 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.*
Paragraph (8)
7. Mr. FOMBA said that, in the French text, the word “une” in the third line should be replaced by “un”, and the word “elles” in the penultimate line should be replaced by “eux”, since “opposé” was masculine.

Paragraph (8) was adopted with that minor drafting amendment to the French text.

Paragraph (9)
Paragraph (9) was adopted.

Paragraph (10)
8. Mr. NOLTE suggested the deletion of the last sentence, which was unnecessary.

Paragraph (10), as amended, was adopted.

Paragraphs (11) to (13)
Paragraphs (11) to (13) were adopted.

The commentary to guideline 2.3.4, as amended, was adopted.

2.4 Procedure for interpretative declarations
Commentary
9. Mr. NOLTE wondered whether it was really appropriate to say that there was a scarcity of interpretative declarations, and he therefore proposed the deletion of “scarcity or”.

The general commentary to section 2.4, as amended, was adopted.

2.4.1 Form of interpretative declarations

Guideline 2.4.1 was adopted.

Commentary
Paragraphs (1) and (2)
Paragraphs (1) and (2) were adopted.

Paragraph (3)
10. Mr. NOLTE suggested the deletion of the words “at the present stage” in the first line.

11. Mr. PELLET (Special Rapporteur) said that he had no objection to that deletion, but the footnote to that phrase should be retained, and the corresponding footnote number should then be placed after the words “treaty in question”.

Paragraph (3), as amended, was adopted.

Paragraph (4)
12. Mr. PELLET (Special Rapporteur) said that the words “online” should be inserted in the fourth line after “publishes them”.

Paragraph (4), as amended, was adopted.

Paragraph (5)
Paragraph (5) was adopted.

The commentary to guideline 2.4.1, as amended, was adopted.

2.4.2 Representation for the purpose of formulating interpretative declarations

Guideline 2.4.2 was adopted.

Commentary
Paragraphs (1) and (2)
Paragraphs (1) and (2) were adopted.

The commentary to guideline 2.4.2 was adopted.

2.4.3 Absence of consequences at the international level of the violation of internal rules regarding the formulation of interpretative declarations

Guideline 2.4.3 was adopted.

Commentary
Paragraph (1)
13. Mr. PELLET (Special Rapporteur) said that in the French text, and presumably also in the Spanish version, the words “ce cas” before the penultimate footnote to the paragraph should be replaced by “un cas”.

Paragraph (1), as amended in the French text, was adopted.

Paragraphs (2) and (3)
Paragraphs (2) and (3) were adopted.

The commentary to guideline 2.4.3, as amended, was adopted.

2.4.4 Time at which an interpretative declaration may be formulated

Guideline 2.4.4 was adopted.

Commentary
Paragraph (1)
14. Sir Michael WOOD said that the English version needed to be brought into line with the French original by starting the paragraph with the words “It results from guideline 1.2”; the words “a contrario” in the French text should be deleted.

Paragraph (1), as amended, was adopted.

Paragraph (2)
15. Sir Michael WOOD said that the words “contracting parties” should be replaced by “contracting States or organizations” both in the second sentence and throughout the Guide to Practice.

Paragraph (2), as amended, was adopted.

16. Mr. PELLET (Special Rapporteur) said that the Commission had already taken a decision to that effect.
Paragraphs (3) to (5) were adopted.

Paragraph (6)

17. Sir Michael WOOD suggested the deletion of paragraph (6), which did not add anything to paragraph (5); indeed, it duplicated paragraph (5).

Paragraph (6) was deleted.

Paragraph (7)

18. Sir Michael WOOD said that, contrary to what was said in paragraph (7), it was quite common for interpretative declarations to be made before the final adoption of the treaty. They might for example be formulated in the Sixth Committee or when a particular provision of a treaty was adopted before the adoption of the treaty as a whole. Paragraph (7) was also inconsistent with the guideline itself, according to which an interpretative declaration could be formulated “at any time”.

19. Mr. PELLET (Special Rapporteur) said that he was not at all convinced by Sir Michael’s line of reasoning; he failed to see how an interpretative declaration could be formulated with regard to a treaty that did not exist. However, even if Sir Michael were right, the paragraph could not simply be deleted.

20. Sir Michael WOOD proposed that the phrase “only after the text of the treaty has been finally adopted” at the end of the sentence be replaced by “only after the text of the provisions of the treaty concerned has been adopted”.

It was so decided.

Paragraph (7), as amended, was adopted.

21. Coming back to paragraph (3), Sir Michael WOOD proposed that, in its footnote, the words “exceptional and” be deleted and that, in the English version, the word “derogative” be replaced by “residual”.

It was so decided.

The commentary to guideline 2.4.4, as amended, was adopted.

2.4.5 Communication of interpretative declarations

Guideline 2.4.5 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 2.4.5 was adopted.

2.4.6 Non-requirement of confirmation of interpretative declarations formulated when signing a treaty

Guideline 2.4.6 was adopted.

22. Sir Michael WOOD suggested that the word “final” in the last line should be deleted.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (4)

Paragraphs (2) to (4) were adopted.

The commentary to guideline 2.4.6, as amended, was adopted.

2.4.7 Late formulation of an interpretative declaration

Guideline 2.4.7 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

23. Sir Michael WOOD said that, as had been done in paragraph (7) of guideline 2.4.4, the words “of the provisions of the treaty concerned” should be inserted after “text” in the second line.

Paragraph (2), as amended, was adopted.

Paragraphs (3) to (5)

Paragraphs (3) to (5) were adopted.

The commentary to guideline 2.4.7, as amended, was adopted.

2.4.8 Modification of an interpretative declaration

Guideline 2.4.8 was adopted.

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

24. Mr. PELLET (Special Rapporteur) said that the words “the declaration” in the second line should read “its declaration”.

Paragraph (3), as amended, was adopted.

Paragraph (4)

Paragraph (4) was adopted.

Paragraph (5)

25. Sir Michael WOOD said that the words “a fortiori” in the second line should be deleted.

Paragraph (5), as amended, was adopted.

The commentary to guideline 2.4.8, as amended, was adopted.
2.5 Withdrawal and modification of reservations and interpretative declarations

2.5.1 Withdrawal of reservations

Guideline 2.5.1 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

26. Mr. NOLTE suggested replacing the word “recently” in the second sentence of the English text by “late”.

Paragraph (2), as amended in the English version, was adopted.

Paragraphs (3) to (9)

Paragraphs (3) to (9) were adopted.

Paragraph (10)

27. Mr. PELLET (Special Rapporteur) said that the words “and the commentary thereto” should be inserted at the end of the second footnote to the paragraph.

Paragraph (10) was adopted with that amendment.

Paragraphs (11) to (15)

Paragraphs (11) to (15) were adopted.

The commentary to guideline 2.5.1, as amended, was adopted.

2.5.2 Form of withdrawal

Guideline 2.5.2 was adopted.

Commentary

Paragraphs (1) to (8)

Paragraphs (1) to (8) were adopted.

Paragraph (9)

28. Mr. NOLTE suggested that the words “juridical event constituted by the” should be deleted; the phrase would then read “the consequence of the lapse of a fixed period of time”.

Paragraph (9), as amended, was adopted.

Paragraph (10)

Paragraph (10) was adopted.

Paragraph (11)

29. Sir Michael WOOD said that, to make the English text clearer, the word “it” in the third line should be replaced by “the reservation”.

It was so decided.

30. Mr. NOLTE, likewise referring to the English text, said that the word “chaos” in the sixth line should be replaced by “uncertainty”.

Paragraph (11), as amended in the English text, was adopted.

Paragraph (12)

Paragraph (12) was adopted.

The commentary to guideline 2.5.2, as amended, was adopted.

2.5.3 Periodic review of the usefulness of reservations

Guideline 2.5.3 was adopted.

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to guideline 2.5.3 was adopted.

2.5.4 Representation for the purpose of withdrawing a reservation at the international level

Guideline 2.5.4 was adopted.

Commentary

Paragraphs (1) to (17)

Paragraphs (1) to (17) were adopted.

The commentary to guideline 2.5.4 was adopted.

2.5.5 Absence of consequences at the international level of the violation of internal rules regarding the withdrawal of reservations

Guideline 2.5.5 was adopted.

Commentary

Paragraph (1)

31. Mr. PELLET (Special Rapporteur) said that, given that the reader would have the Guide to Practice, there was no reason to reproduce the text of the guidelines in a footnote when they were referred to. The same comment also applied to the last footnote to paragraph (4) of the commentary to guideline 2.5.6.

Paragraph (1) was adopted with the deletion of the corresponding footnote.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

32. Sir Michael WOOD said that the words “the withdrawal of” should be inserted before “a reservation is not valid”, since that was the subject of the draft guideline.

33. Mr. PELLET (Special Rapporteur) said that he could go along with the proposal by Sir Michael, but he was not convinced that only the rules of internal law relating to the withdrawal of a reservation were concerned.

Paragraph (4), as amended, was adopted.

Paragraphs (5) and (6)

Paragraphs (5) and (6) were adopted.

The commentary to guideline 2.5.5, as amended, was adopted.
2.5.6 Communication of withdrawal of a reservation

Guideline 2.5.6 was adopted.

Commentary

Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted.

2.5.7 Effects of withdrawal of a reservation

Guideline 2.5.7 was adopted.

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

Paragraph (6)

34. Mr. PELLET (Special Rapporteur) said that the original text of the quotation should be placed in the body of the text, in accordance with the usual practice, and not in the footnote. That question should be resolved once and for all and should be made a general rule.

Paragraph (6), as amended, was adopted.

Paragraphs (7) and (8)

Paragraphs (7) and (8) were adopted.

Paragraph (9)

35. Mr. PELLET (Special Rapporteur) said that the words “because of the reservation in question” should be inserted after “author of the reservation”.

Paragraph (9), as amended, was adopted.

Paragraphs (10) and (11)

Paragraphs (10) and (11) were adopted.

The commentary to guideline 2.5.7, as amended, was adopted.

2.5.8 Effective date of withdrawal of a reservation

Guideline 2.5.8 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

36. Mr. PELLET (Special Rapporteur) said that, in the second sentence, the word “formula” should be replaced by “formulation”.

Paragraph (4), as amended, was adopted.

Paragraphs (5) to (7)

Paragraphs (5) to (7) were adopted.

Paragraph (8)

37. Mr. NOLTE proposed replacing the word “code” in the third line by “guide”.

Paragraph (8), as amended, was adopted.

Paragraphs (9) to (12)

Paragraphs (9) to (12) were adopted.

Paragraph (13)

38. Mr. PELLET (Special Rapporteur) said that, in the third sentence, the first “certainly” should be deleted.

Paragraph (13), as amended, was adopted.

The commentary to guideline 2.5.8, as amended, was adopted.

2.5.9 Cases in which the author of a reservation may set the effective date of withdrawal of the reservation

Guideline 2.5.9 was adopted.

Commentary

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.

The commentary to guideline 2.5.9 was adopted.

2.5.10 Partial withdrawal of a reservation

Guideline 2.5.10 was adopted.

Commentary

Paragraphs (1) to (12)

Paragraphs (1) to (12) were adopted.

Paragraph (13)

39. Mr. PELLET (Special Rapporteur) said that, in the footnote added in brackets in Horn’s quote, the words “will be studied in fine and” should be deleted, and the words “will be the subject” should be amended to read “are the subject”.

Paragraph (13), as amended, was adopted.

Paragraphs (14) to (20)

Paragraphs (14) to (20) were adopted.

The commentary to guideline 2.5.10, as amended, was adopted.

2.5.11 Effect of a partial withdrawal of a reservation

Guideline 2.5.11 was adopted.

Commentary

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.

The commentary to guideline 2.5.11 was adopted.

2.5.12 Withdrawal of interpretative declarations

Guideline 2.5.12 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.5.12 was adopted.

2.6 Formulation of objections

2.6.1 Definition of objections to reservations

Guideline 2.6.1 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

40. Sir Michael WOOD said that paragraph (2) would be clearer if it began with the words “The definition of reservations contains five elements”.

Paragraph (2), as amended, was adopted.

Paragraphs (3) to (5)

Paragraphs (3) to (5) were adopted.

Paragraph (6)

41. Sir Michael WOOD suggested the deletion, in the last sentence, of the words “very sensitive”.

Paragraph (6), as amended, was adopted.

Paragraph (7)

42. Mr. PELLET (Special Rapporteur) said that he had no objection to that suggestion, although he continued to believe that the question was in fact very sensitive.

Paragraph (7), as amended, was adopted.

Paragraph (8)

43. Mr. NOLTE proposed the deletion of the words “At the present stage”.

Paragraph (8) was adopted.

44. Mr. PELLET (Special Rapporteur) said that he was not really in agreement with that proposal, but could go along with it, provided that a footnote was added explaining why the Commission would include the detail in question at a later stage.

Paragraph (7) was adopted.

Paragraph (9)

45. Sir Michael WOOD suggested that the first footnote to the paragraph be deleted, because it was unnecessary.

46. Mr. PELLET (Special Rapporteur) said that in the French text, the footnote was very relevant. He proposed inserting the words “en français” after “expression” in the footnote.

47. Sir Michael WOOD endorsed this suggestion on the condition that, in the English version, the word “expression” be italicized.

48. Mr. NOLTE proposed that the words “the intentions of States” should be replaced by “the expressed intentions of States”.

49. Mr. PELLET (Special Rapporteur) said that he was not convinced by Mr. Nolte’s proposal. It was precisely when the intention was not expressed that the problem arose.

50. Sir Michael WOOD agreed with Mr. Nolte and suggested replacing the words “the law of treaties” in the first line by “the law on reservations to treaties”; that would solve the problem.

Paragraph (8), as amended, was adopted.

Paragraph (10)

51. Mr. NOLTE proposed that the second sentence and its footnote be deleted.

Paragraph (11)

52. Mr. PELLET (Special Rapporteur) endorsed Mr. Nolte’s proposal and suggested that the following sentence begin with the words “According to the Dictionnaire de droit international public, the word ‘objection’ means …”.348

Paragraph (9), as amended, was adopted.

Paragraphs (10) and (11)

Paragraphs (10) and (11) were adopted.

Paragraphs (12) to (14)

53. Mr. CAFLISCH said that in the English text, the verb “arbitrate” should be replaced by the adjective “arbitral”.

Paragraphs (12) to (14) were adopted with that drafting amendment to the English text.

Paragraph (15)

Paragraph (15) was adopted.

Paragraph (16)

54. Mr. PELLET (Special Rapporteur) said that in the French text, the words “il pouvait s’agir aussi” should be replaced by “il peut s’agir aussi”.

55. Mr. NOLTE, supported by Sir Michael WOOD, proposed that the phrase “for the most part European States” in parentheses in the second sentence be deleted.

Paragraph (16), as amended, was adopted.

Paragraph (17)

56. Mr. PELLET (Special Rapporteur) said that in the French text, the words “mais au statut juridique et aux effets incertains” should be replaced by “mais dont le statut juridique et les effets sont incertains”.

Paragraph (17) was adopted with that minor drafting amendment to the French text.

Paragraph (18)

Paragraph (18) was adopted.

Paragraph (19)

57. Mr. PELLET (Special Rapporteur) said that, in the last sentence, the words “description of reactions to a reservation” should be replaced by “description of a reaction to a reservation”.

Paragraph (19), as amended, was adopted.

Paragraph (20)

58. Sir Michael WOOD suggested the deletion of the words “In the view of the Commission”: everything that was said in the document reflected the view of the Commission.

Paragraph (20), as amended, was adopted.

Paragraphs (21) and (22)

Paragraphs (21) and (22) were adopted.

Paragraphs (23) and (24)

59. Mr. NOLTE said that, given that paragraphs (23) to (25) concerned “minimum”, “maximum” and “intermediate” effects of objections, footnotes should be added referring to the relevant draft guidelines, namely draft guideline 4.3.7 in paragraph (23) and draft guideline 4.5.3 in paragraph (24).

Paragraphs (23) and (24) were adopted, subject to an amendment to be made later by the Secretariat.

Paragraph (25)

60. Mr. NOLTE proposed replacing the word “validity” in the first line by “effect”.

It was so decided.

Paragraph (25), as amended, was adopted.

Paragraph (26)

Paragraph (26) was adopted.

Paragraph (27)

61. Mr. PELLET (Special Rapporteur) proposed the deletion of the last footnote to the paragraph.

It was so decided.

Paragraph (27), as amended, was adopted.

Paragraph (28)

62. Sir Michael WOOD suggested the deletion of the words “third clause of the proposed” in the first sentence.

63. Mr. PELLET (Special Rapporteur) said that, in the last sentence of the French text, the word “produisait” should be in the present tense.

Paragraph (28), as amended, was adopted.

Mr. Niehaus (Vice-Chairperson) took the Chair.

Paragraphs (29) to (34)

Paragraphs (29) to (34) were adopted.

The commentary to guideline 2.6.1, as amended, was adopted.

2.6.2 Right to formulate objections

Guideline 2.6.2 was adopted.

Commentary

Paragraphs (1) to (9)

Paragraphs (1) to (9) were adopted.

Paragraph (10)

64. Mr. PELLET (Special Rapporteur) said that, in the third sentence of the French text, the words “cette faculté” should be replaced by “ce droit”.

Paragraph (10), as amended, was adopted.

Paragraphs (11) and (12)

Paragraphs (11) and (12) were adopted.

The commentary to guideline 2.6.2, as amended, was adopted.

2.6.3 Author of an objection

Guideline 2.6.3 was adopted.

Commentary

Paragraphs (1) to (9)

Paragraphs (1) to (9) were adopted.

Paragraph (10)

65. Sir Michael WOOD said that, at the end of the third sentence of the English text, the words “an executive agreement” should be replaced by “a treaty in simplified form”.

Paragraph (10), as amended in the English text, was adopted.

The commentary to guideline 2.6.3, as amended in the English text, was adopted.

2.6.4 Objections formulated jointly

Guideline 2.6.4 was adopted.
Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.6.4 was adopted.

Paragraphs (1) to (4) were adopted.

Paragraphs (1) to (6) were adopted.

Paragraph (7)

68. Mr. PELLET (Special Rapporteur) said that, in the penultimate line of the French text, the word “projets” should be replaced by “directives”.

Paragraph (7), as amended in the French text, was adopted.

Paragraphs (4) to (9) were adopted.

Paragraphs (4) to (6) were adopted.

Paragraph (7), as amended in the French text, was adopted.

Paragraphs (1) to (6) were adopted.

Paragraphs (1) to (4) were adopted.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (4) were adopted.

Paragraphs (2) to (4) were adopted.

Paragraphs (3) to (6) were adopted.

The commentary to guideline 2.6.7, as amended, was adopted.

Paragraphs (3) to (6) were adopted.

The commentary to guideline 2.6.10, as amended, was adopted.
2.6.11 Requirement of confirmation of an objection formulated prior to the expression of consent to be bound by a treaty

71. Mr. PELLET (Special Rapporteur) said that, for the sake of consistency with the body of the text, the words “by a non-signatory State” should be inserted in the title, which would then read: “Requirement of confirmation of an objection formulated by a non-signatory State prior to the expression of consent to be bound by a treaty”.

72. Sir Michael WOOD said that that gave the impression that the draft guideline only concerned non-signatory States, which was not the case. To solve that problem, he suggested the deletion of the words “Requirement of” in the title.

73. Mr. VÁZQUEZ-BERMÚDEZ pointed out that, if the Special Rapporteur’s proposal was retained, the insertion would have to read: “by a non-signatory State or international organization”.

74. Mr. PELLET (Special Rapporteur) endorsed Sir Michael’s proposal.

Guideline 2.6.11, as amended, was adopted.

Commentary
Paragraphs (1) to (8)

Paragraphs (1) to (8) were adopted.

The commentary to guideline 2.6.11 was adopted.

2.6.12 Time period for formulating objections

Guideline 2.6.12 was adopted.

Commentary
Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

Paragraph (6)

75. Mr. PELLET (Special Rapporteur) said that, for the sake of consistency with the guidelines already adopted, the words “late reservations” should be replaced by “reservations formulated late” in the third sentence from the end and in the fourth footnote to the paragraph, in which he also proposed the insertion of the words “See guideline 2.3.1 and the commentary thereto”.

Paragraph (6), as amended, was adopted.

Paragraphs (7) to (10)

Paragraphs (7) to (10) were adopted.

The commentary to guideline 2.6.12, as amended, was adopted.

2.6.13 Objections formulated late

Guideline 2.6.13 was adopted.

Commentary
Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

76. Mr. PELLET (Special Rapporteur) said that the words “late objections” in the sixth footnote to the paragraph should be replaced by “objections formulated late”.

Paragraph (2), as amended, was adopted.

Paragraphs (3) to (8)

Paragraphs (3) to (8) were adopted.

The commentary to guideline 2.6.13, as amended, was adopted.

2.7 Withdrawal and modification of objections to reservations

Commentary
Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted.

The general commentary to section 2.7 was adopted.

2.7.1 Withdrawal of objections to reservations

Guideline 2.7.1 was adopted.

Commentary
Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

The commentary to guideline 2.7.1 was adopted.

2.7.2 Form of withdrawal of objections to reservations

Guideline 2.7.2 was adopted.

Commentary
Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 2.7.2 was adopted.

2.7.3 Formulation and communication of the withdrawal of objections to reservations

Guideline 2.7.3 was adopted.

Commentary
Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

The commentary to guideline 2.7.3 was adopted.

2.7.4 Effect on reservation of withdrawal of an objection

Guideline 2.7.4 was adopted.

Commentary
Paragraph (1)

77. Mr. PELLET (Special Rapporteur) said that, in the footnote to the paragraph, the reference to the title of
guideline 2.5.7 should be corrected to read “Effects of withdrawal of a reservation”.

Paragraph (1), as corrected, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

78. Mr. PELLET (Special Rapporteur) said that the words “which are the subject of guidelines 4.2.1 to 4.2.4” should be inserted at the end of the penultimate sentence.

Paragraph (4), as amended, was adopted.

The commentary to guideline 2.7.4, as amended, was adopted.

2.7.5 Effective date of withdrawal of an objection

Guideline 2.7.5 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

79. Mr. PELLET (Special Rapporteur) said that, in the third sentence of the French text, the words “celui ou celle qui avait objecté à la réserve” should be replaced by “l’auteur de l’objection”.

Paragraph (2), as amended in the French text, was adopted.

Paragraphs (3) to (7)

Paragraphs (3) to (7) were adopted.

The commentary to guideline 2.7.5, as amended, was adopted.

2.7.6 Cases in which the author of an objection may set the effective date of withdrawal of the objection

Guideline 2.7.6 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 2.7.6 was adopted.

2.7.7 Partial withdrawal of an objection

Guideline 2.7.7 was adopted, subject to minor drafting amendments to be made later to the English text.

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to guideline 2.7.7 was adopted.

2.7.8 Effect of a partial withdrawal of an objection

Guideline 2.7.8 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

80. Mr. NOLTE said that the word “weakened” in the last sentence of the English text should be replaced by “limited”.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Paragraph (3) was adopted.

The commentary to guideline 2.7.8, as amended in the English text, was adopted.

2.7.9 Widening of the scope of an objection to a reservation

Guideline 2.7.9 was adopted.

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

81. Mr. PELLET (Special Rapporteur) said that the last footnote to the paragraph should be amended to refer to paragraph (3) of the commentary to guideline 2.6.13.

Paragraph (3), as amended, was adopted.

Paragraphs (4) to (6)

Paragraphs (4) to (6) were adopted.

The commentary to guideline 2.7.9, as amended, was adopted.

2.8 Formulation of acceptances of reservations

2.8.1 Forms of acceptance of reservations

Guideline 2.8.1 was adopted.

Commentary

Paragraphs (1) to (8)

Paragraphs (1) to (8) were adopted.

Paragraph (9)

82. Mr. PELLET (Special Rapporteur) said that a footnote should be added at the end of the paragraph to refer to guidelines 4.3.1 (Effect of an objection on the entry into force of the treaty as between the author of the objection and the author of a reservation) and 4.3.4 (Non-entry into force of the treaty for the author of a reservation when unanimous acceptance is required) and the commentaries thereto.
Paragraph (9), as amended, was adopted.

Paragraphs (10) to (12)

Paragraphs (10) to (12) were adopted.

The commentary to guideline 2.8.1, as amended, was adopted.

2.8.2 Tacit acceptance of reservations

Guideline 2.8.2 was adopted.

Commentary

Paragraphs (1) to (10)

Paragraphs (1) to (10) were adopted.

Paragraph (11)

83. Mr. PELLET (Special Rapporteur) said that the last sentence should be amended to read: "The Commission nevertheless decided that it was useful to recall that the rule set out in guideline 2.8.2 applied "unless the treaty otherwise provides" in order to adhere to the text of the Vienna Conventions."

Paragraph (11), as amended, was adopted.

The commentary to guideline 2.8.2, as amended, was adopted.

2.8.3 Express acceptance of reservations

Guideline 2.8.3 was adopted.

Commentary

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.

Paragraph (7)

84. Mr. PELLET (Special Rapporteur) proposed that the third footnote to the paragraph be amended to read: “On the question of reciprocity of reservations, see guideline 4.2.4 (Effect of an established reservation on treaty relations); see also D. Müller (footnote … above), pp. 901–907, paras. 30–38.”

Paragraph (7), as amended, was adopted.

Paragraph (8)

Paragraph (8) was adopted.

The commentary to guideline 2.8.3, as amended, was adopted.

2.8.4 Form of express acceptance of reservations

Guideline 2.8.4 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.8.4 was adopted.

2.8.5 Procedure for formulating express acceptance of reservations

Guideline 2.8.5 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

The commentary to guideline 2.8.5 was adopted.

2.8.6 Non-requirement of confirmation of an acceptance formulated prior to formal confirmation of a reservation

Guideline 2.8.6 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 2.8.6 was adopted.

2.8.7 Unanimous acceptance of reservations

Guideline 2.8.7 was adopted.

Commentary

Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted.

The commentary to guideline 2.8.7 was adopted.

2.8.8 Acceptance of a reservation to the constituent instrument of an international organization

Guideline 2.8.8 was adopted.

Commentary

Paragraphs (1) to (9)

Paragraphs (1) to (9) were adopted.

The commentary to guideline 2.8.8 was adopted.

2.8.9 Organ competent to accept a reservation to a constituent instrument

Guideline 2.8.9 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.8.9 was adopted.

2.8.10 Modalities of the acceptance of a reservation to a constituent instrument

Guideline 2.8.10 was adopted.

Commentary

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.
Paragraph (7)

85. Mr. PELLET (Special Rapporteur) said that, in the last sentence, the words “As guideline 2.8.12 explains” should be replaced by “As it follows from guideline 2.8.12”.

Paragraph (7), as amended, was adopted.

The commentary to guideline 2.8.10, as amended, was adopted.

2.8.11 Acceptance of a reservation to a constituent instrument that has not yet entered into force

Guideline 2.8.11 was adopted.

Commentary

Paragraphs (1) to (9)

Paragraphs (1) to (9) were adopted.

The commentary to guideline 2.8.11 was adopted.

2.8.12 Reaction by a member of an international organization to a reservation to its constituent instrument

Guideline 2.8.12 was adopted.

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to guideline 2.8.12 was adopted.

2.8.13 Final nature of acceptance of a reservation

Guideline 2.8.13 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.8.13 was adopted.

2.9 Formulation of reactions to interpretative declarations

2.9.1 Approval of an interpretative declaration

Guideline 2.9.1 was adopted.

Commentary

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.

The commentary to guideline 2.9.1 was adopted.

2.9.2 Opposition to an interpretative declaration

Guideline 2.9.2 was adopted.

Commentary

Paragraphs (1) to (8)

Paragraphs (1) to (8) were adopted.

Paragraph (9)

86. Mr. NOLTE said that, in the French text, the reference to “l’Allemagne” (Germany) should be replaced by “la République fédérale d’Allemagne” (the Federal Republic of Germany).

Paragraph (9), as amended, was adopted.

Paragraphs (10) to (15)

Paragraphs (10) to (15) were adopted.

The commentary to guideline 2.9.2, as amended, was adopted.

2.9.3 Recharacterization of an interpretative declaration

Guideline 2.9.3 was adopted.

Commentary

Paragraphs (1) to (8)

Paragraphs (1) to (8) were adopted.

The commentary to guideline 2.9.3 was adopted.

2.9.4 Right to formulate approval or opposition, or to recharacterize

Guideline 2.9.4 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 2.9.4 was adopted.

2.9.5 Form of approval, opposition and recharacterization

Guideline 2.9.5 was adopted.

Commentary

Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted.

The commentary to guideline 2.9.5 was adopted.

2.9.6 Statement of reasons for approval, opposition and recharacterization

Guideline 2.9.6 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.9.6 was adopted.

2.9.7 Formulation and communication of approval, opposition or recharacterization

Guideline 2.9.7 was adopted.
Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.9.7 was adopted.

2.9.8 Non-preservation of approval or opposition

Guideline 2.9.8 was adopted.

Commentary

Paragraphs (1) to (11)

Paragraphs (1) to (11) were adopted.

The commentary to guideline 2.9.8 was adopted.

2.9.9 Silence with respect to an interpretative declaration

Guideline 2.9.9 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 2.9.9 was adopted.

The meeting rose at 12.50 p.m.

3111th MEETING

Monday, 25 July 2011, at 3 p.m.

Chairperson: Mr. Maurice KAMTO

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

The obligation to extradite or prosecute (aut dedere aut judicare) (A/CN.4/638, sect. E, A/CN.4/648)349

[Fifth item 6]

FOURTH REPORT OF THE SPECIAL RAPPORTEUR

1. The CHAIRPERSON invited the Special Rapporteur to introduce his fourth report on the obligation to extradite or prosecute (A/CN.4/648).

2. Mr. GALICKI (Special Rapporteur) said that his fourth report was a further step in the process of formulating draft articles dealing with some general aspects of the topic. After recalling the work done in 2009350 and 2010351 by the Working Group on the obligation to extradite or to prosecute, he explained that in his fourth report he had decided to concentrate primarily on the sources of the obligation aut dedere aut judicare.

3. The general framework proposed by the Working Group in 2009352 would seem to be an appropriate basis for further codification work, since it had been accepted by the members of the Sixth Committee of the General Assembly. The starting point for that work was to identify the sources of the obligation to extradite or prosecute, a task he had begun in his previous reports.353 It should be noted that, in comparison with the reaction of States to the preliminary report on the topic in 2006, criticism of the idea that there might possibly be a basis in customary law for the obligation aut dedere aut judicare354 had been to some extent relaxed in 2008. That relaxed attitude had been even more visible after the two sessions—in 2009 and 2010—when the topic had been discussed in the Working Group of the Commission.

4. The eight sections of the chapter of the fourth report on the sources of the obligation to extradite or prosecute closely followed the above-mentioned general framework. They dealt with the duty to cooperate in the fight against impunity; the obligation to extradite or prosecute in existing treaties; the principle aut dedere aut judicare355 as a rule of customary international law; the discussion of the customary character of the obligation in the Sixth Committee during the sixty-fourth session of the General Assembly (2009); the customary basis of the rights invoked before the ICJ; an identification of categories of crimes and offences which could be classified as those giving rise to the customary obligation aut dedere aut judicare; jus cogens as a source of a duty to extradite or prosecute; and a proposed draft article 4 on international custom as a source of the obligation aut dedere aut judicare.

5. The fourth report contained an entirely new element in the shape of a draft article on the duty to cooperate in the fight against impunity. That duty, as a sui generis primary source of the obligation aut dedere aut judicare, had headed the list of the legal bases of the obligation as proposed by the Working Group in 2009, and its prime importance had been confirmed by the Working Group in 2010.356 For that reason, he was proposing, in paragraph 40 of his fourth report, a draft article 2 that read:

“Article 2. Duty to cooperate

1. In accordance with the present draft articles, States shall, as appropriate, cooperate among themselves, and with competent international courts and tribunals, in the fight against impunity as it concerns crimes and offences of international concern.

349 Reproduced in Yearbook ... 2011, vol. II (Part One).

352 Yearbook ... 2009, vol. II (Part Two), pp. 143–144, para. 204.