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Summary record of the 3120th meeting

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3120th MEETING

Monday, 8 August 2011, at 3 p.m.

Chairperson: Mr. Maurice KAMTO

Present: Mr. Cafilisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, 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.

Programme, procedures and working methods of the Commission and its documentation (A/CN.4/638, sect. J, A/CN.4/L.796⁴⁴⁴)

[Agenda item 11]

REPORT OF THE PLANNING GROUP

1. Ms. JACOBSSON (Chairperson of the Planning Group), introducing the report of the Planning Group (A/CN.4/L.796), said that the Group had held two meetings. It had considered section J of the topical summary of the discussions held in the Sixth Committee of the General Assembly at its sixty-fifth session, entitled “Other decisions and conclusions of the Commission” (A/CN.4/638); the proposed strategic framework for the period 2012–2013⁴⁴⁵ covering “Programme 6: Legal affairs”; General Assembly resolution 65/26 of 6 December 2010, on the report of the International Law Commission on the work of its sixty-second session, in particular paragraphs 7, 8 and 13 to 21;⁴⁴⁶ and chapter XIII, section A.3, of the report of the Commission on the work of its sixty-first session⁴⁴⁷ concerning the consideration of General Assembly resolution 63/128 of 11 December 2008 on the rule of law at the national and international levels.

2. The report of the Planning Group was organized to reflect the outcome of discussions on the items before the Group. In 2011, the Group had focused mainly on two issues: working methods and the long-term programme of work.

3. The Planning Group had reconstituted the Working Group on the long-term programme of work under the Chairpersonship of Mr. Candiotti. The Planning Group had decided to recommend the addition of five topics to the Commission’s long-term programme of work. During the current quinquennium, the Commission had already included two new topics on its agenda. The Working Group’s proposal was described in greater detail in the report of the Planning Group.

4. The Planning Group had also established a Working Group on methods of work, under the Chairpersonship of

Mr. Hassouna, to consider how the Commission’s working methods should be revised, supplemented or, if necessary, fully applied, taking into account the Commission’s relevant past decisions.

5. The Working Group had submitted a report which the Planning Group had adopted on 3 August 2011. The report covered several issues concerning special rapporteurs, study groups, the Drafting Committee, publications and relations between the Commission and the Sixth Committee. The report had been incorporated into the report of the Planning Group that was now before the Commission. Once the recommendations had been approved by the Commission, they would be included in its report to the General Assembly.

6. In response to General Assembly resolution 65/32 of 6 December 2010, the Planning Group had decided to prepare a revised section on the rule of law.

7. It was her understanding that, if approved by the Commission as was customary, the Planning Group’s recommendations would be incorporated, with any needed adjustments, into the chapter of the Commission’s report entitled “Other decisions and conclusions of the Commission”.

8. The CHAIRPERSON invited the members of the Commission to begin their consideration, paragraph by paragraph, of the report of the Planning Group.

A. Programme, procedures and working methods of the Commission and its documentation

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

1. WORKING GROUP ON THE LONG-TERM PROGRAMME OF WORK

Paragraph 3

9. Mr. MURASE said that the second topic should simply be termed “Protection of the atmosphere”.

Paragraph 3, as amended, was adopted.

Paragraphs 4 to 7

Paragraphs 4 to 7 were adopted.

2. METHODS OF WORK OF THE COMMISSION

Paragraphs 8 to 26

Paragraphs 8 to 26 were adopted.

3. CONSIDERATION OF GENERAL ASSEMBLY RESOLUTION 65/32 OF 6 DECEMBER 2010 ON THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS

Paragraphs 27 to 33

Paragraphs 27 to 33 were adopted.

4. HONORARIA

Paragraph 34

Paragraph 34 was adopted.

⁴⁴⁴ Mimeographed; available from the Commission’s website.

⁴⁴⁵ A/65/6 (Prog. 6).

⁴⁴⁶ *Yearbook ... 2010*, vol. II (Part Two).

⁴⁴⁷ *Yearbook ... 2009*, vol. II (Part Two), p. 150, para. 231.

5. ASSISTANCE TO SPECIAL RAPPORTEURS

Paragraph 35

Paragraph 35 was adopted.

6. ATTENDANCE OF THE GENERAL ASSEMBLY BY SPECIAL RAPPORTEURS DURING THE CONSIDERATION OF THE COMMISSION'S REPORT

Paragraph 36

Paragraph 36 was adopted.

7. DOCUMENTATION AND PUBLICATIONS

Paragraph 37

Paragraph 37 was adopted.

Paragraph 38

10. Mr. VÁZQUEZ BERMÚDEZ, supported by Ms. ESCOBAR HERNÁNDEZ, proposed that the words “in all the official languages of the United Nations” be inserted in the fifth sentence, before the phrase “makes ... known”.

Paragraph 38, as amended, was adopted.

Paragraphs 39 to 43

Paragraphs 39 to 43 were adopted.

Paragraph 44

11. Sir Michael WOOD proposed that in the third sentence, the adjective “domestic”, preceding the words “courts and tribunals”, be deleted.

Paragraph 44, as amended, was adopted.

Paragraphs 45 to 47

*Paragraphs 45 to 47 were adopted.***B. Date and place of the sixty-fourth session of the Commission**

Paragraph 48

Paragraph 48 was adopted.

Paragraph 49

12. Mr. VASCIANNIE noted that the split session was mentioned only in the final sentence of the paragraph, and therefore of the document, and only in relation to the upcoming 2012 session. Given its importance, he proposed that the subject should be mentioned earlier in the text, with an emphasis on the fact that the remark was valid in general, not just for the year 2012.

13. Mr. GAJA suggested that the following sentence be inserted at the end of paragraph 49: “Earlier split sessions give sufficient time for the translation into all the official languages of the commentaries on the texts adopted in the first part of the session.”

14. Mr. PELLET said that he supported Mr. Gaja's proposal and proposed that the words “preparation and” should be inserted between the words “the” and “translation”.

15. Mr. NOLTE, noting that paragraph 49 dealt with two different issues, namely the duration of the session and the fact that it was split into two parts, suggested dividing the paragraph in two and creating a paragraph 50 that would start with the final sentence of what was now paragraph 49.

16. Mr. DUGARD said that he agreed with Mr. Gaja and Mr. Pellet that the need to retain the split-session format should be emphasized, especially since the Commission's members had many outside obligations.

17. Sir Michael WOOD said that, while he supported Mr. Gaja's proposal, there were additional arguments in favour of retaining the split-session format, and they should be mentioned. He therefore proposed that paragraph 49 should consist of just one sentence—the current first one—and that paragraph 50 should begin with the current second sentence of paragraph 49, which would start with the words “In that regard, the Commission recalls its decision of 2000”.⁴⁴⁸

18. The CHAIRPERSON, speaking as a member of the Commission, proposed that after the first sentence of the current paragraph 49, a sentence be inserted, emphasizing the fact that the proposed duration of the 2012 session—nine weeks—was valid only for 2012, as with the start of a new quinquennium the newly appointed special rapporteurs would not have much material to present. The idea was to ensure that the Commission was not pressured to keep holding shorter sessions in later years.

19. Mr. MELESCANU, supporting Mr. Vasciannie's proposal, said that the arguments in favour of retaining a split session should be presented at the start of the document, in section A, and that only paragraph 48, concerning the date and place of the sixty-fourth session, should be retained in section B.

20. Mr. NOLTE said that perhaps, on an exceptional basis, the order of sections A and B could be reversed.

21. Sir Michael WOOD said that he would prefer not to change the current order, which had long been established, and suggested adding to section A a new paragraph 3 emphasizing the importance of split sessions.

22. Ms. JACOBSSON (Chairperson of the Planning Group) expressed support for the suggestions about emphasizing the need to hold split sessions.

23. Mr. NOLTE proposed that the issue of a split session should be mentioned both in a new paragraph 3 and in section B, where such matters were usually covered, with a cross reference between the two.

24. Mr. WISNUMURTI said that the issue merited special attention and that he supported the insertion of a new paragraph 3. However, he thought that the exceptional nature of the nine-week session instituted in 2012 must be emphasized, as must the reasons for the decision.

25. Sir Michael WOOD said that the key sentence of paragraph 49, in which the Commission recalled its

⁴⁴⁸ *Yearbook ... 2000*, vol. II (Part Two), p. 132, para. 735.

decision of 2000, cited in the last footnote of the document, could form the basis of a new paragraph 3. One approach might be to indicate that the Planning Group had felt that the length of sessions and split sessions were of particular importance and had recalled the discussions on the subject in 2000. The Commission's decision could then be cited in the paragraph itself rather than in a footnote, thereby highlighting it.

26. The CHAIRPERSON said he took it that the members of the Commission wished to rework paragraph 49 and to include a new paragraph 3 in the *chapeau* of section A. He proposed that the redrafting be done by the Chairperson of the Planning Group and the secretariat of the Commission on the basis of proposals that members would submit in writing.

It was so decided.

Paragraph 49, as amended, was adopted.

The report of the Planning Group (A/CN.4/L.796), as a whole, was adopted.

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)

27. The CHAIRPERSON invited the Commission to resume its consideration of Part 2 of chapter IV of its report, on reservations to treaties, beginning with the commentaries to the guidelines contained in document A/CN.4/L.783/Add.4. He recalled that only a few paragraphs remained to be adopted.

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* (continued)* (A/CN.4/L.783/Add.4–5)

2.1.5 *Communication of reservations* (concluded)**

Commentary (concluded)**

Paragraph (28) (concluded)**

28. Mr. NOLTE recalled his proposal to delete the first half of the penultimate sentence, so that the sentence read: “The Commission decided not to devote a specific guideline [to it].” He suggested also that the second part of the final sentence be deleted, as it did not really seem useful. It seemed sufficient to say that the Commission “felt that this same rule applies to reservations to constituent instruments *stricto sensu*”.

29. Mr. PELLET (Special Rapporteur) said that he accepted the first proposal but not the second. The final sentence served the purpose of stating that the same rule was applied to treaties that set up deliberative bodies with

secretariats, even if they were not necessarily constituent instruments of international organizations. Without that sentence, the paragraph would serve no purpose.

30. The CHAIRPERSON said he took it that the Commission agreed to delete only the first part of the penultimate sentence.

Paragraph (28), as amended, was adopted.

The commentary to guideline 2.1.5, as amended, was adopted.

2.3 *Late formulation of reservations* (concluded)**

Commentary (concluded)**

Paragraph (10) (concluded)**

31. Mr. NOLTE said that it was actually the footnote citing Horn⁴⁴⁹ that posed problems for him, specifically the final phrase, which read “but the practice also applies in the case of treaties that do not include a withdrawal clause” and referred readers to paragraph (13) of the commentary. That implied that even if a treaty had no withdrawal clause, withdrawal nevertheless remained an option if the purpose was to formulate a reservation that would otherwise be late. The Commission could suggest nothing of the sort. That part of the footnote should thus be deleted.

32. Mr. PELLET (Special Rapporteur) agreed that the wording posed problems. It was not true that a party remained always at liberty to accede anew to the same treaty, and that needed to be stated in the footnote in question. The author's observations on the issue were interesting and should be retained, but the implication that the practice “always” applied was debatable and the Commission should disassociate itself from it. The simplest solution would be a phrase like “It is doubtful that this is always the case”, with no mention of the Convention providing a Uniform Law for Cheques or cross reference to paragraph (13), which dealt with other matters.

Paragraph (10), as amended, was adopted.

Paragraphs (13) and (14)

33. Mr. PELLET (Special Rapporteur) said that the amendment to the above-mentioned footnote took care of the issues raised in connection with paragraphs (13) and (14).

Paragraphs (13) and (14) were adopted.

The commentary to guideline 2.3, as amended, was adopted.

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

Commentary (concluded)**

Paragraph (6) (concluded)**

⁴⁴⁹ F. Horn, *Reservations and Interpretative Declarations to Multilateral Treaties*, The Hague, T.M.C. Asser Instituut, Swedish Institute of International Law, Studies in International Law, vol. 5 (1988), p. 43. For the discussion of this issue, see the 3109th meeting above, paras. 62–69.

** Resumed from the 3110th meeting.

* Resumed from the 3110th meeting.

** Resumed from the 3109th meeting.

34. Mr. PELLET (Special Rapporteur) said that after much hesitation, he would agree to delete the paragraph, as Mr. Nolte had requested.

It was so decided.

The commentary to guideline 2.3.3, as amended, was adopted.

2.8.1 *Forms of acceptance of reservations* (concluded)

Commentary (concluded)

Paragraph (2) (concluded)

35. Mr. GAJA said that with the Special Rapporteur's permission, he wished to revisit the paragraph, as he had been absent when it had been adopted.⁴⁵⁰ He proposed that the words "with regard to permissible reservations" be inserted at the start of the second sentence, immediately followed by a footnote indicator for the following new footnote: "When a reservation is not permissible, acceptance does not affect the permissibility of the reservation; see guideline 3.3.3. It would therefore make little sense to draw a presumption of acceptance from the absence of any objection." The clarification was needed because the 1969 Vienna Convention, in article 20 (para. 5), stated that a reservation was considered to have been accepted when 12 months had elapsed (so-called tacit acceptance); for impermissible reservations, however, that could not be the case. An acceptance that had no consequences could not be considered a tacit acceptance and it might even serve as a disincentive to the late formulation of an objection after the 12-month period had elapsed.

36. Mr. NOLTE asked whether that concerned only individual acceptance or also collective acceptance. The commentary to guideline 3.3.3 made a distinction in that regard and the Commission indicated there that it was not taking a position on the issue of whether collective acceptance was possible.

37. Mr. GAJA said that it would be difficult to conclude that acceptance was unanimous when all the parties did not react to a given impermissible reservation. If, on the other hand, there was some kind of positive acceptance then the situation was different and could be said to result in an amendment to the treaty. But mere silence, even if it lasted 12 months, could not have so radical an effect as to render permissible a reservation that was impermissible.

38. Mr. NOLTE said that the commentary to guideline 3.3.3, especially paragraphs (10) to (13), indicated that the question remained open: collective silence could, in certain cases, result in the acceptance of an impermissible reservation, although the Commission had not taken a position on the question. Perhaps that commentary should be amended, given the elements that Mr. Gaja was proposing to add to the commentary to draft guideline 2.8.1.

39. Mr. GAJA said that it probably should. He added that his proposal reflected the approach that States often used when reacting to an impermissible reservation after the 12-month period.

40. Mr. NOLTE emphasized that the two issues were closely linked and that it would be preferable first to examine the commentary to draft guideline 3.3.3 so as not to prejudge the issues covered there.

41. Mr. PELLET (Special Rapporteur) said that the points were actually not related and that it would be better not to introduce into the commentary to a guideline in Part 2 of the Guide elements relating to Part 3. He himself had always stressed the need to keep separate issues relating to the formulation, permissibility and effects of reservations. In any case, Mr. Nolte need not worry, since the footnote proposed by Mr. Gaja would be understood as being "without prejudice" to what was stated in the commentary to guideline 3.3.3.

42. Mr. NOLTE said that with an explicit clarification to that effect, he could accept the addition proposed by Mr. Gaja.

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

43. The CHAIRPERSON invited the Commission to begin its consideration of Part 3 of the Guide to Practice, contained in document A/CN.4/L.783/Add.5.

3. *Permissibility of reservations and interpretative declarations* (A/CN.4/L.783/Add.5)

General commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

44. Mr. NOLTE proposed that, to explain more clearly why the Commission had decided to use the term "permissibility" in English and not "validity", the words "offers the advantage that it does not prejudge" be replaced with "would have had the advantage of not leading to mistaken conclusions as to the position of the Commission with regard to".

45. Mr. PELLET (Special Rapporteur) said he supported that proposal and that the words "in French" should be inserted after the words "opted for" in the first sentence.

It was so decided.

Paragraph (4), as amended, was adopted.

Paragraph (5)

46. Mr. NOLTE proposed that the word "French" should be inserted before the word "term" to make it clear that the issue was purely a linguistic one.

Paragraph (5), as amended, was adopted.

Paragraph (6)

47. Mr. NOLTE proposed that paragraph (6) of the commentary to draft guideline 3.3.2 (Non-permissibility of reservations and international responsibility), which better explained the Commission's choice of terms, be

⁴⁵⁰ See the 3110th meeting above, para. 82.

transposed to the first bullet point. He further proposed that the second bullet point be amended to indicate that the terms used made it possible not to take a position in the doctrinal controversy between the proponents of permissibility and those of opposability.

48. Mr. PELLET (Special Rapporteur) said that he endorsed Mr. Nolte's first proposal but that a new text would have to be drafted to replace paragraph (6) of the commentary to draft guideline 3.3.2. Regarding Mr. Nolte's second proposal, he said that the problem seemed to be solely one of translation into English.

Paragraph (6), as amended, was adopted on the understanding that the English text would be reworded.

Paragraph (7)

Paragraph (7) was adopted.

Paragraph (8)

49. Mr. NOLTE proposed that, in the English version, the words "A special section will be devoted" should be replaced with "An additional section is devoted". The section was additional, not special, and it was preferable to use the present indicative throughout the paragraph.

It was so decided.

Paragraph (8), as amended in the English version, was adopted.

The general commentary to Part 3, as amended, was adopted.

3.1 Permissible reservations

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

50. Sir Michael WOOD proposed that in the English text, the word "power" be replaced with "right" and that the word should be used throughout as the translation of the word "*faculté*".

It was so decided.

Paragraph (4) was adopted with that amendment to the English text.

Paragraph (5)

51. Mr. PELLET (Special Rapporteur) proposed that the opening phrase be amended to read: "Although the view has sometimes been expressed that it was excessive to speak of a 'right to reservations', the Convention proceeds from the principle that there is a presumption in favour of their permissibility." He further proposed that the final sentence be amended to read: "It should, however, be noted that by using the verb 'may', the introductory clause of article 19 recognizes that States have a right, but it is only the right to 'formulate' reservations", so as to reflect the Commission's latest thinking on the issue.

It was so decided.

Paragraph (5), as amended, was adopted.

Paragraph (6)

52. Mr. NOLTE said that the first two sentences could be misleading and proposed that they be reworded to read: "The words 'formulate' and 'formulation' were carefully chosen. They indicate that formulation is not sufficient of itself." Similarly, the second and third sentences should be combined to read: "They indicate that a 'formulated' reservation is not 'made' and does not produce any effect, merely by virtue of such a statement."

It was so decided.

53. Sir Michael WOOD said that at the end of the second proposal, the words "merely by virtue of such a statement", which made no sense, should be amended. He did not have any specific wording to suggest, however.

54. Mr. McRAE, responding to Sir Michael's comments, suggested that at the end of the second proposal, the word "statement" be replaced with "formulation".

It was so decided.

55. Mr. HUANG said that the fourth sentence of the paragraph should be deleted. It invited confusion by referring to "China", since at the time of the United Nations Conference on the Law of Treaties, the People's Republic of China had not yet been a member of the United Nations. Furthermore, his country had later acceded to the 1969 Vienna Convention as a new State party, not as a successor State to the purported "Republic of China". The sentence was unacceptable.

56. Mr. PELLET (Special Rapporteur), supported by Mr. NOLTE, strongly protested a deletion that would amount to rewriting history. At the time of the United Nations Conference on the Law of Treaties, the entity that was now Taiwan Province of China had been called "China" at the United Nations.

57. Sir Michael WOOD said that the sentence in question was of some legal significance and should thus be retained. To respond to Mr. Huang's concern, he proposed that the words "by China" in the fourth sentence and the words "explanations by China" in parentheses in the relevant footnote should be deleted.

Paragraph (6), as amended, was adopted.

Paragraph (7)

Paragraph (7) was adopted.

Paragraph (8)

58. Mr. PELLET (Special Rapporteur) said that the words "of freedom" in the first sentence should be replaced with "of the right", in keeping with what the Commission had just decided on the subject.

Paragraph (8), as amended, was adopted.

Paragraph (9)

Paragraph (9) was adopted.

Paragraph (10)

59. Mr. NOLTE proposed that in the second sentence, the words “places more emphasis on”, which were vague, should be replaced with the words “deals with”.

Paragraph (10), as amended, was adopted.

The commentary to guideline 3.1, as amended, was adopted.

3.1.1 *Reservations prohibited by the treaty*

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

60. Mr. PELLET (Special Rapporteur) said that for the sake of clarity, the word “he”, at the end of the third footnote to the paragraph, should be replaced by “Yasseen”.

Paragraph (5) was adopted with that amendment to the footnote.

Paragraph (6)

61. Mr. McRAE said that in the English version of the first sentence, the word “discussion” should be replaced with “question”, which was more idiomatic.

Paragraph (6) was adopted with that amendment to the English text.

Paragraphs (7) to (10)

Paragraphs (7) to (10) were adopted.

Paragraph (11)

62. Sir Michael WOOD said that in the second sentence, the words “in their *travaux préparatoires*” should be replaced with “while they were being drafted”.

63. Mr. PELLET (Special Rapporteur) said that in the French version the words “*travaux préparatoires*”, which were usually translated as “drafting history”, should be retained.

Paragraph (11) was adopted with that amendment to the English text.

Paragraph (12)

Paragraph (12) was adopted.

The commentary to guideline 3.1.1, as amended, was adopted.

3.1.2 *Definition of specified reservations*

Commentary

Paragraph (1)

64. Mr. PELLET (Special Rapporteur) said that in the footnote to the paragraph, again for the sake of clarity, “this word” should be replaced by “the word ‘made’”.

Paragraph (1) was adopted with that amendment to the footnote.

Paragraph (2)

Paragraph (2) was adopted.

Paragraph (3)

65. Mr. McRAE said that the expression “Eastern countries” in the paragraph’s second sentence presumably referred to the countries of Eastern Europe: that needed to be specified.

66. Mr. NOLTE, supported by Mr. PELLET (Special Rapporteur), said that at the time in question, the socialist countries, and not only those in Eastern Europe, had been referred to in that way.

67. Mr. PETRIČ said that Yugoslavia had not participated in the “effort” referred to in the sentence. He therefore proposed that the words “Eastern countries” should be replaced with “some Eastern countries”.

Paragraph (3), as amended, was adopted.

Paragraphs (4) to (10)

Paragraphs (4) to (10) were adopted.

Paragraph (11)

68. Mr. McRAE said he was surprised to see that the first footnote to the paragraph referred to a scholarly article, when in the English text the sentence containing the footnote indicator started with the words “Some reserving States thought”.

69. Mr. PELLET (Special Rapporteur) said that there was a problem with the translation. The French original did not refer to “reserving States”, and the English should be aligned with the French. However, at the end of the preceding sentence, the phrase “and divided the Commission, whose members advocated different positions” should be deleted, in keeping with the Commission’s decision not to mention in the commentaries any disagreements between members.

Paragraph (11), as amended, was adopted.

Paragraphs (12) and (13)

Paragraphs (12) and (13) were adopted.

The commentary to guideline 3.1.2, as amended, was adopted.

3.1.3 *Permissibility of reservations not prohibited by the treaty*

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

70. Sir Michael WOOD said that, for the sake of clarity, the word “Vienna” should be inserted before “Convention” in the paragraph’s final sentence.

Paragraph (3), as amended, was adopted.

Paragraph (4)

71. Mr. PELLET (Special Rapporteur) said that after the word “above” at the end of the first footnote to the paragraph, a semicolon and the words “see also paragraphs (4) to (7) of the general introduction to the Guide to Practice” should be inserted. It was in those paragraphs that the Commission discussed and explained its choice of the French terms “*licéité*” and “*validité*”.

Paragraph (4) was adopted with that amendment to the footnote.

Paragraph (5)

72. Mr. PELLET (Special Rapporteur) proposed that, to avoid confusion, in the French version, the words “*de l’article 19*” be inserted after “*alinéa c*”.

Paragraph (5), as amended in the French version, was adopted.

Paragraphs (6) and (7)

Paragraphs (6) and (7) were adopted.

Paragraph (8)

73. Mr. NOLTE proposed that the words “would leave the treaty bereft of substance” at the end of the paragraph should be replaced with “would be incompatible with the object and purpose of the treaty”, an even stronger exception to the principle of the validity of reservations authorized by the treaty, as was shown in the paragraph that followed.

Paragraph (8), as amended, was adopted.

Paragraphs (9) and (10)

Paragraphs (9) and (10) were adopted.

The commentary to guideline 3.1.3, as amended, was adopted.

3.1.4 *Permissibility of specified reservations*

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

74. Sir Michael WOOD said that in the second sentence of the English text, the words “favoured by the majority of Commission members” should be replaced by an accurate rendering of the corresponding French phrase, “*retenue par la Commission*”.

75. The CHAIRPERSON said that the secretariat would take care of it.

On that understanding, paragraph (2) was adopted.

Paragraphs (3) to (5)

Paragraphs (3) to (5) were adopted.

The commentary to guideline 3.1.4, subject to an amendment to paragraph (2), was adopted.

3.1.5 *Incompatibility of a reservation with the object and purpose of the treaty*

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

76. Sir Michael WOOD said that in the English version of the first bullet point, the word “respect” should be replaced with “comply with”.

Paragraph (2) was adopted with that amendment to the English text.

Paragraph (3)

Paragraph (3) was adopted.

Paragraph (4)

77. Mr. NOLTE said that the remark at the beginning of the final sentence that the Special Rapporteur had probably shown “tactical caution” was pure speculation and did not belong in a commentary.

78. Mr. PELLET (Special Rapporteur) proposed that the opening phrase of the sentence in question be deleted, so that it began “However, the self-same Special Rapporteur’s ‘conversion’”.

Paragraph (4), as amended, was adopted.

Paragraphs (5) to (13)

Paragraphs (5) to (13) were adopted.

Paragraph (14)

79. Mr. NOLTE said that it seemed to him inaccurate to assert, as did the first sentence of subparagraph (14) (i), that “[t]he term ‘essential element’ is to be understood in relation to the object of the reservation as formulated by the author”. He proposed that the phrase be deleted and that the sentence read: “The term ‘essential element’ is not necessarily limited to a specific provision.”

Paragraph (14), as amended, was adopted.

Paragraph (15)

Paragraph (15) was adopted.

The commentary to guideline 3.1.5, as amended, was adopted.

The meeting rose at 6 p.m.