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Summary record of the 3122nd meeting

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

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fell under article 20, paragraph 1, of the 1986 Vienna Convention, no objection could be made to that reservation. The penultimate sentence drew attention to the fact that an amendment proposed by France at the United Nations Conference on the Law of Treaties,⁴⁵⁴ which had expressed exactly the same idea, had not been adopted by the Drafting Committee. The last footnote to the paragraph indicated that Pierre-Henri Imbert had concluded that the States represented at the Conference had rejected that amendment because they had not wished to restrict the right to object to expressly authorized reservations.⁴⁵⁵ The inclusion of that footnote was rather misleading because it suggested that the Commission agreed with the position expressed therein. He therefore proposed that the footnote be deleted. Alternatively, the Commission could delete the whole sentence that referred to the French amendment. Mention of the latter concerned only a detail of the *travaux préparatoires* and added nothing to the rationale of the paragraph.

76. Mr. NOLTE said that the key issue was whether parties to a treaty intended to exclude the possibility of making objections when they accepted that expressly authorized reservations could be made. Perhaps the Commission should be more flexible and should not state categorically that objections were excluded if there was a possibility of formulating an expressly authorized reservation, since in theory it was conceivable that the parties had not wished to reject that possibility. The Special Rapporteur had rightly emphasized that objections could be formulated without furnishing any reasons.

77. Mr. PELLET (Special Rapporteur) said that clearly the position of the Commission was diametrically opposed to that of Mr. Imbert, but it would be unfortunate to excise any reference to the amendment by France, because it had existed. The footnote in question could simply state: “*Contra*: Pierre-Henri Imbert, see footnote XXX above, p. 55”. Although Imbert was an authority on the subject of reservations to treaties, the Special Rapporteur would not personally be opposed to the deletion of the footnote.

78. Sir Michael WOOD said that the meaning of such an abbreviated footnote would be obscure. For that reason, he would prefer the deletion of the footnote.

79. Mr. NOLTE said that two of the sources underpinning the paragraph pointed to the fact that the existence of an expressly authorized reservation did not necessarily rule out the possibility of making objections; the rejection of the amendment by France and the citation of an authoritative academic source both argued for that position. The Commission should therefore allow for the possibility of objections being formulated even to expressly authorized reservations.

80. Mr. GAJA said that Mr. Nolte seemed to be suggesting that States might make objections even when

the parties to a treaty had explicitly stated therein that a certain reservation could be made. He himself would not wish to encourage them to do so; there was no reason why they should be allowed to have second thoughts about whether a reservation expressly authorized under a treaty could be made. Perhaps the amendment by France had not been adopted because it had been regarded as superfluous; its rejection did not necessarily indicate that the United Nations Conference on the Law of Treaties wanted to allow States to have second thoughts. He considered that the Commission would be on firm ground if it deleted the footnote in question.

Paragraph (15) was adopted with the deletion of the last footnote to the paragraph.

The meeting rose at 1 p.m.

3122nd MEETING

Tuesday, 9 August 2011, at 3 p.m.

Chairperson: Mr. Maurice KAMTO

Present: Mr. Caflisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Gaja, Mr. Galicki, 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.

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

CHAPTER IX. *Protection of persons in the event of disasters (A/CN.4/L.788 and Add.1–2)*

1. The CHAIRPERSON invited the Commission to begin its consideration of chapter IX of its report, on protection of persons in the event of disasters, contained in document A/CN.4/L.788 and Add.1–2.

A. Introduction

Paragraphs 1 to 6

Paragraphs 1 to 6 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraphs 7 to 9

Paragraphs 7 to 9 were adopted.

Paragraphs 10 and 11

Paragraphs 10 and 11 were adopted, subject to the insertion of the dates and numbers of the meetings.

⁴⁵⁴ *Official Records of the United Nations Conference on the Law of Treaties, First and Second Sessions, Vienna, 26 March–24 May 1968 and 9 April–22 May 1969, Documents of the Conference (A/CONF.39/11/Add.2, United Nations publication, Sales No. E.70.V.5), document A/CONF.39/C.1/L.169, p. 137.*

⁴⁵⁵ P.-H. Imbert, *Les réserves aux traités multilatéraux*, Paris, Pedone, 1979, p. 55.

1. INTRODUCTION BY THE SPECIAL RAPPORTEUR OF THE FOURTH REPORT

Paragraphs 12 to 14

Paragraphs 12 to 14 were adopted.

2. SUMMARY OF THE DEBATE ON DRAFT ARTICLE 12

Paragraph 15

2. Mr. VASCIANNIE asked why only the debate on draft article 12 was summarized.

3. The CHAIRPERSON recalled that draft articles 10 and 11 had already been adopted. It was the practice of the Commission not to summarize debates on draft articles that it had already adopted in the same year with the commentaries thereto.

4. Mr. MIKULKA (Secretary to the Commission) explained that, in order not to undermine the importance of the commentaries, the Commission considered it preferable to submit them to the Sixth Committee without the summary of the debates to which they had given rise, bearing in mind also that those debates were reflected in the commentaries.

5. Sir Michael WOOD suggested, to simplify the reading for those who were not familiar with that practice, the insertion of a footnote that might read, for example, that “in accordance with the long-standing practice of the Commission, the present report does not contain a summary of the debate on draft articles 10 and 11, because the Commission has adopted the commentaries thereto this year”, followed by a reference to the paragraphs in which those commentaries were reproduced.

6. Mr. CANDIOTI also suggested stating that the debates were duly reflected in the summary records of the meeting.

7. Mr. WISNUMURTI approved the proposed solution, but he regretted that practice. Draft articles 10 and 11 had given rise to lively debate, which the Sixth Committee should be aware of.

8. Mr. PELLET said that the practice, which he personally approved, was justified by the fact that the debates, and in particular the minority views, were in principle reflected in the commentaries submitted on first reading. However, that was not at all the case for draft articles 10 and 11. A reading of the relevant commentaries, which were contained in document A/CN.4/L.788/Add.2, gave the impression that the Commission had been unanimous on their subject, yet members had expressed very divergent views. Mr. Vasciannie and Mr. Wisnumurti were right to think that something important would be concealed from the Sixth Committee if that controversy was not reflected. He supported Sir Michael’s proposal to explain the Commission’s practice, but it would be preferable to do so in a paragraph rather than in a footnote.

9. Mr. PETRIČ said that the situation was exceptional: it was very unusual for the Drafting Committee to put aside a sole draft article. Draft article 12 had given rise not only to a very lively debate in plenary, but also to lengthy

discussions in the Drafting Committee. That needed to be reflected. Draft articles 10 and 11, which had been adopted, represented what had been said, even if some did not always see their comments reproduced. He endorsed the idea of explaining the Commission’s practice. However, it would be difficult to alter the commentaries in the absence of the Special Rapporteur.

10. Mr. VASCIANNIE expressed appreciation for those explanations, but believed that in the current case the rule was not justified. He suggested adding a paragraph to summarize the debate; the summary provided by the Chairperson of the Drafting Committee, which captured the essence of the debate, could be used for that purpose.

11. Mr. NOLTE said that he agreed with Mr. Petrič and Mr. Vasciannie, but thought that the Commission should also look at what had been done in the past. Other debates in the Commission had also been characterized by considerable differences of opinion, and it would be interesting to learn to what extent the controversy had been reflected in the commentaries.

12. Mr. McRAE said he failed to see how the differing views in the commentaries could be reflected if everything that had been said was attributed to “the Commission”. After all, the summary of the debates made it clear that “some members” had expressed one opinion or another.

13. Sir Michael WOOD said that the commentaries on first reading reflected the debate, whereas at the stage of second reading, it was the position of the Commission that was expressed. He endorsed the proposal to add an explanatory paragraph together with a reference to the summary records, which was very important. It should perhaps be specified that the summary records were available from the Commission’s website. However, it was not helpful to reproduce the summary of the Chairperson of the Drafting Committee, because that had been another debate. Nor did he think it wise to depart from the Commission’s practice, because that would set a precedent. Members who believed that their views had not been sufficiently reflected could point that out to the Special Rapporteur when the commentaries were considered.

14. The CHAIRPERSON said he took it that the Commission agreed to add a new paragraph, which would be drafted by the secretariat in line with the proposals by Mr. Candiotti, Mr. Pellet and Sir Michael. It would, however, be preferable not to refer to the summary records, which reflected all the debates and not only those concerning draft articles 10 and 11.

Paragraph 15 was adopted, on the understanding that it would be followed by a new paragraph.

Paragraphs 16 to 19

Paragraphs 16 to 19 were adopted.

3. CONCLUDING REMARKS OF THE SPECIAL RAPPORTEUR

Paragraphs 20 to 22

Paragraphs 20 to 22 were adopted.

Paragraph 23

15. Mr. GAJA said that the words “draft articles 10 to 12” should be replaced by “draft article 12”, because the summary of the debate only concerned that draft article.

It was so decided.

Paragraph 23, as amended, was adopted.

Section B, as amended and subject to the addition of a new paragraph, was adopted.

16. The CHAIRPERSON invited the Commission to begin its consideration of document A/CN.4/L.788/Add.1, which contained the commentaries to draft articles 6 to 9 on protection of persons in the event of disasters already provisionally adopted by the Commission.

C. Text of the draft articles on protection of persons in the event of disasters provisionally adopted by the Commission at its sixty-third session

2. TEXT OF THE DRAFT ARTICLES AND COMMENTARIES THERETO

Article 6. Humanitarian principles in disaster response

Commentary

Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted.

The commentary to article 6 was adopted.

Article 7. Human dignity

Commentary

Paragraph (1)

17. Following an exchange of views in which Mr. McRAE, Mr. NOLTE and Sir Michael WOOD took part, the CHAIRPERSON said he took it that the Commission wished to delete the word “central” in the first sentence and to replace the words “a guiding principle” in the third sentence by “the guiding principle”.

It was so decided.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (5)

Paragraphs (2) to (5) were adopted.

Paragraph (6)

18. The CHAIRPERSON suggested that the word “traduisent” in the third sentence of the French text should be replaced by “dénotent”.

It was so decided.

Paragraph (6), as amended in the French text, was adopted.

The commentary to article 7, as amended, was adopted.

Article 8. Human rights

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

19. Sir Michael WOOD suggested, for greater clarity in the English text, that the words “maintained by way of” in the first sentence should be replaced by “reflected in”.

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

Paragraphs (3) to (5)

Paragraphs (3) to (5) were adopted.

The commentary to article 8, as amended, was adopted.

Article 9. Role of the affected State

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

20. Mr. NOLTE proposed the insertion, in the footnote, of a reference to the decision of the Permanent Court of Arbitration rendered on 4 April 1928 by Max Huber in the dispute between the United States and the Netherlands concerning the sovereignty of the Island of Palmas, in which it was stated that “[t]erritorial sovereignty ... has as corollary a duty: the obligation to protect within the territory the rights of other States” (p. 839 of the award in *Island of Palmas*).

21. Sir Michael WOOD suggested replacing the words “which has the right to non-intervention” in the fourth sentence by “which benefits from the principle of non-intervention”.

22. Mr. GAJA said that the last sentence was controversial and should be deleted.

These proposals were accepted.

Paragraph (2), as amended, was adopted.

Paragraph (3)

23. Sir Michael WOOD proposed replacing the word “concepts” in the second sentence by “principles”.

It was so decided.

Paragraph (3), as amended, was adopted.

Paragraphs (4) to (6)

Paragraphs (4) to (6) were adopted.

The commentary to article 9, as amended, was adopted.

24. The CHAIRPERSON invited the Commission to begin its consideration of the rest of the section reproduced in document A/CN.4/L.788/Add.2, which contained the commentaries to draft articles 10 and 11 on protection of persons in the event of disasters already provisionally adopted by the Commission.

Article 10. Duty of the affected State to seek assistance

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

25. Mr. GAJA proposed the insertion, at the beginning of the third sentence, of the words “While this may occur also in the absence of any disaster,” to make it clear that it was not the disaster that triggered the international obligations of States towards individuals.

Paragraph (4), as amended, was adopted.

Paragraphs (5) to (7)

Paragraphs (5) to (7) were adopted.

Paragraph (8)

26. Mr. GAJA said that the quotation from the General Assembly resolution in the second sentence of paragraph (8) could be deleted, because it also appeared in paragraph (2) of the commentary to article 11, where it was better placed.

27. Mr. NOLTE said that he endorsed Mr. Gaja’s proposal, but pointed out that it would then be necessary to delete the word “further” in the next sentence.

Paragraph (8), as amended, was adopted.

Paragraphs (9) and (10)

Paragraphs (9) and (10) were adopted.

Article 11. Consent of the affected State to external assistance

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

Paragraph (6)

28. Mr. GAJA said that paragraph (8) of the commentary to article 11 said the same thing, and said it better. He therefore suggested the deletion of paragraph (6).

Paragraph (6) was deleted.

Paragraphs (7) to (9)

Paragraphs (7) to (9) were adopted.

Paragraph (10)

29. Mr. GAJA said that he did not understand the last sentence and wondered whether there would be any harm in deleting it.

30. Sir Michael WOOD agreed that the sentence was unclear, and he was surprised by the words “positive consent” in the English text, which suggested that there might also be “negative consent”. He therefore supported Mr. Gaja’s proposal to delete the sentence.

Paragraph (10), as amended, was adopted.

Paragraph (11)

Paragraph (11) was adopted.

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

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.6)

31. The CHAIRPERSON invited the Commission to resume its consideration of the portion of the Guide to Practice contained in document A/CN.4/L.783/Add.6 and recalled that it had completed its consideration of the commentary to guideline 4.1.1.

4.1.2 *Establishment of a reservation to a treaty which has to be applied in its entirety*

Guideline 4.1.2 was adopted.

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

32. Mr. NOLTE suggested the deletion of the words “which has long been practised” in the first sentence.

Paragraph (3), as amended, was adopted.

Paragraph (4)

Paragraph (4) was adopted.

Paragraph (5)

33. Sir Michael WOOD said that the quotation in the fourth sentence did not correspond to the text of the guideline and did not shed any light on the matter. He therefore proposed that the rest of the paragraph, from the fourth sentence on, be deleted.

Paragraph (5), as amended, was adopted.

Paragraph (6)

34. Mr. PELLET (Special Rapporteur) said that, in the first sentence, the word “intrinsicly” should be deleted.

Paragraph (6), as amended, was adopted.

Paragraphs (7) to (13)

Paragraphs (7) to (13) were adopted.

The commentary to guideline 4.1.2, as amended, was adopted.

4.1.3 *Establishment of a reservation to a constituent instrument of an international organization*

Guideline 4.1.3 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

35. Sir Michael WOOD said that, in conformity with the decision taken by the Commission in that regard, the footnote should be deleted, because it merely reproduced the guideline.

Paragraph (2) was adopted with the deletion of the footnote.

Paragraph (3)

Paragraph (3) was adopted.

The commentary to guideline 4.1.3, as amended, was adopted.

4.2 *Effects of an established reservation*

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

The commentary to section 4.2 was adopted.

4.2.1 *Status of the author of an established reservation*

Guideline 4.2.1 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

36. Sir Michael WOOD, supported by Mr. PELLET (Special Rapporteur), said that he did not understand the paragraph. It went without saying that the author of the reservation became a party to the treaty when the treaty entered into force for it. He therefore proposed the deletion of the paragraph.

Paragraph (4) was deleted.

Paragraph (5)

37. Mr. PELLET (Special Rapporteur) said that, since paragraph (4) had been deleted, the word “However” at the beginning of paragraph (5) would also have to be deleted.

Paragraph (5), as amended, was adopted.

Paragraphs (6) to (10)

Paragraphs (6) to (10) were adopted.

Paragraph (11)

38. Mr. NOLTE, referring to the first sentence, said that the Commission had not been of the view that application of article 20, paragraph 4 (c), of the Vienna Conventions was hesitant, but that it was inconsistent. The text should be amended accordingly.

Paragraph (11), as amended, was adopted.

Paragraphs (12) and (13)

Paragraphs (12) and (13) were adopted.

Paragraph (14)

39. Sir Michael WOOD said that the words “for this reason” at the end of the paragraph were obscure and should be replaced by the phrase “by virtue of its instrument expressing consent to be bound”.

Paragraph (14), as amended, was adopted.

The commentary to guideline 4.2.1, as amended, was adopted.

4.2.2 *Effect of the establishment of a reservation on the entry into force of a treaty*

Guideline 4.2.2 was adopted.

Commentary

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.

The commentary to guideline 4.2.2 was adopted.

4.2.3 *Effect of the establishment of a reservation on the status of the author as a party to the treaty*

Guideline 4.2.3 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 4.2.3 was adopted.

4.2.4 *Effect of an established reservation on treaty relations*

Guideline 4.2.4 was adopted.

Commentary

Paragraphs (1) to (21)

Paragraphs (1) to (21) were adopted.

Paragraphs (22) and (23)

40. Mr. GAJA said that he had problems with the examples cited in paragraphs (22) and (23). At issue were reservations that modified the obligations initially provided for under the treaty not only by removing some aspects of those obligations, but also by adding new ones. However, when the Commission had discussed

guideline 1.1 (Definition of reservations), it had considered that this type of unilateral declaration should not be considered to be a reservation.

41. Mr. PELLET (Special Rapporteur) said that he would address that question in greater detail and return to it at the next meeting.

The adoption of paragraphs (22) and (23) was deferred.

Paragraphs (24) to (32)

Paragraphs (24) to (32) were adopted.

Paragraph (33)

42. Mr. PELLET (Special Rapporteur) said that, in the French text, the words “*en effet*” in the third sentence of the first footnote to the paragraph should be deleted.

Paragraph (33), as amended, was adopted.

Paragraph (34)

Paragraph (34) was adopted.

4.2.5 *Non-reciprocal application of obligations to which a reservation relates*

Guideline 4.2.5 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

43. Mr. PELLET (Special Rapporteur) said that, in the first sentence, the words “may appear” should be replaced by “seems”.

Paragraph (5), as amended, was adopted.

Paragraphs (6) to (12)

Paragraphs (6) to (12) were adopted.

The commentary to guideline 4.2.5, as amended, was adopted.

4.2.6 *Interpretation of reservations*

Guideline 4.2.6 was adopted.

Commentary

Paragraphs (1) to (7)

Paragraphs (1) to (7) were adopted.

Paragraphs (8) and (9)

44. Mr. PELLET (Special Rapporteur) said that paragraphs (8) and (9) should be merged.

Paragraphs (8) and (9), as amended, were adopted.

Paragraph (10)

45. Sir Michael WOOD pointed out that the English text had three bullet points, whereas the French text had four.

Paragraph (10) was adopted, subject to drafting corrections to be made to the English text.

Paragraphs (11) to (13)

Paragraphs (11) to (13) were adopted.

Paragraph (14)

46. Sir Michael WOOD said that the word “all” in the first sentence should be deleted. As currently formulated, the sentence implied that most reservations should be interpreted restrictively.

47. Mr. PELLET (Special Rapporteur) said that he was not very enthusiastic about that proposal, because the fact of the matter was that it could not be excluded that some reservations must be interpreted restrictively.

48. Sir Michael WOOD suggested that the sentence could be recast to read: “However, this does not mean that, as a general rule, reservations should be interpreted restrictively.”

49. Mr. McRAE proposed replacing the words “such a principle of interpretation” in the second sentence, which were unclear, by “a principle of restrictive interpretation”.

50. Mr. NOLTE said that it would be preferable to say “a principle of restrictive interpretation of reservations”.

51. Sir Michael WOOD proposed redrafting paragraph (14) to read: “However, this does not mean that, as a general rule, reservations should be interpreted restrictively. The International Court of Justice has not generally referred to a restrictive interpretation in its interpretation of reservations.”

Paragraph (14), as amended, was adopted.

Paragraph (15)

Paragraph (15) was adopted.

Paragraph (16)

52. Mr. NOLTE said that, in the first sentence, the word “consubstantiality” was unusual and should be replaced by “interdependence”.

53. Sir Michael WOOD agreed that the word “consobstantiality” was strange in such a context, at any rate in English, and he suggested replacing it by “substantive link” in order to retain the idea of a substantive connection.

54. The CHAIRPERSON announced that the rest of paragraph (16) would be considered at the next meeting. He invited the Commission to turn to paragraph (2) of the commentary to guideline 3.4.2, contained in document A/CN.4/L.783/Add.5, in which a point concerning the second footnote to the paragraph had been left in abeyance at the previous meeting (para. 55).

3.4.2 *Permissibility of an objection to a reservation (concluded)**

Commentary (concluded) (A/CN.4/L.783/Add.5)*

Paragraph (2) *(concluded)**

55. Mr. PELLET (Special Rapporteur) said that, upon verification, and as assumed by Mr. Nolte, it had in fact been the People's Republic of China that had formulated a reservation to article 66 of the 1969 Vienna Convention. He failed to see why any change needed to be made to the footnote in question.

56. Mr. HUANG thanked the Special Rapporteur for that explanation, but wished to reiterate that the word "China" employed indiscriminately in the Special Rapporteur's report to designate both the People's Republic of China and the so-called "Republic of China" was misleading. There was only one China, and the name "China" must only designate the People's Republic of China. Therefore, all references in the report to the name "China" which referred to the so-called "Republic of China" should be deleted.

57. The CHAIRPERSON said that, as had already been stressed at the previous meeting, that was not a purely technical question. Moreover, the Special Rapporteur could not be instructed to carry out that task. On the other hand, whenever Mr. Huang considered that the problem arose, he was free to intervene to formulate a proposal. In any event, the Special Rapporteur's explanation showed that the problem did not arise for the footnote being discussed. If he heard no objection, he would take it that the Commission wished to adopt the footnote as it stood.

It was so decided.

The commentary to guideline 3.4.2, as amended, was adopted.

The meeting rose at 6 p.m.

3123rd MEETING

Wednesday, 10 August 2011, at 10 a.m.

Chairperson: Mr. Maurice KAMTO

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

Present: Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Huang, 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.

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)*

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.6)*

1. The CHAIRPERSON invited the Commission to continue its consideration of chapter IV of the draft report and drew attention to Part 4 of the Guide to Practice contained in document A/CN.4/L.783/Add.6.

4.3 *Effect of an objection to a valid reservation*

Guideline 4.3 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

2. Mr. NOLTE said that the statement in the last sentence that reservations were consubstantial with the State's consent to be bound by the treaty should be amended in accordance with the formulation adopted for the first sentence of paragraph (16) of the commentary to guideline 4.2.6.

Paragraph (2), as amended, was adopted.

Paragraphs (3) to (7)

Paragraphs (3) to (7) were adopted.

The commentary to guideline 4.3, as amended, was adopted.

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*

Guideline 4.3.1 was adopted.

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

3. Mr. NOLTE said that since in the first sentence the word "objection" was described as "simple", for the sake of clarity and consistency, the second sentence should be redrafted to read: "This, in fact, is one of the fundamental differences between a simple objection and acceptance, one which, along with other considerations, means that such an objection is not 'tantamount to acceptance' ...".

Paragraph (3), as amended, was adopted.

* Resumed from the 3121st meeting, paragraph 55.