

Document:-
A/CN.4/3124

Summary record of the 3124th meeting

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

Extract from the Yearbook of the International Law Commission:-
2011, vol. I

*Downloaded from the web site of the International Law Commission
(<http://legal.un.org/ilc/>)*

79. Mr. HUANG said that the final sentence of the first footnote to paragraph (18) expressed the consistent position of the Chinese Government with regard to all conventions signed by the Taiwanese authorities in the name of China, namely that they were illegal and therefore null and void. It was a position that had been acknowledged and respected by all Member States of the United Nations. Thus, from a purely legal standpoint, it did not make sense for the Commission to cite such a reservation. It was incomprehensible how such a simple issue could become so complicated. If the Commission insisted on including that reference in the Guide to Practice, he would be compelled to object to the Guide to Practice as a whole.

80. The CHAIRPERSON asked whether Mr. McRae's proposal might address Mr. Huang's concerns.

81. Mr. HUANG said that there were enough examples of reservations that the Commission could use without having to resort to an invalid one to which a member of the Commission was opposed.

82. Mr. PELLET (Special Rapporteur) said that Mr. Huang's comments appeared to be those of a representative of the People's Republic of China; if so, he was addressing the wrong forum. Even though Mr. Huang had previously accepted paragraph (18) because its first footnote clarified the reference in the paragraph to the Republic of China, if Mr. Huang was no longer in favour of retaining paragraph (18), the Commission could, in that particular case, amend it without misrepresenting the historical truth, since it was possible to find other pertinent examples.

83. However, with regard to the remaining references, he was of the opinion that one should not attempt to rewrite history. When conducting a scientific study in a forum composed of independent experts, one could not pretend that nothing had happened prior to the restoration of the lawful rights of the People's Republic of China. While he himself was among those who entertained no doubts that there was only one China, as far as the *travaux préparatoires* were concerned, he was strongly opposed to ignoring the existence of the Republic of China prior to 1971, when, in actuality, a representative of Chinese Taipei had taken a position, which, at the time, had been attributed to China.

84. He could agree to the method proposed by Mr. McRae, even though it was common knowledge that, before 1971, China had been represented in the United Nations by an illegitimate Government. Nonetheless, if the Commission wished to highlight that fact each time it referred to the Republic of China, he would not be opposed. It was a reasonable solution, and the Commission should be able to adopt it by consensus.

85. Mr. HUANG said that there were three principles that should guide the Commission in dealing with the issue he had raised. The first was that there was only one China. The second was that any reservation made by the People's Republic of China was acceptable for inclusion in the Guide to Practice. The third was that issues relating to one China or to Taiwan Province of China posed a serious political problem. On that basis, he could propose two

solutions. First, when a list of countries included China, the Commission should delete the reference to "China". That would pose no problem to the Guide to Practice or to the paragraph in question. Secondly, when a reference mentioned only China, he could agree to the inclusion of a footnote, similar to the first footnote to paragraph (18). However, he could not agree to the inclusion of cross references throughout the Guide to Practice that pointed to one exceptional case.

86. Mr. HMOUD, raising a point of order, said that he wished to inform the new members of the Commission that, according to the statute of the International Law Commission, they served on that body as independent experts. Although many members of the Commission might be ambassadors of their States of origin, in plenary sittings of the Commission, they were required to speak in their personal capacity and should not make any references that implied otherwise.

87. The CHAIRPERSON suggested that the Commission should defer consideration of the matter raised by Mr. Huang.

The meeting rose at 1 p.m.

3124th MEETING

Wednesday, 10 August 2011, at 3 p.m.

Chairperson: Mr. Maurice KAMTO

Present: Mr. Caflich, Mr. Candioti, 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.

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.6–7)

1. The CHAIRPERSON invited the Commission to continue its consideration of Part 4 of the Guide to Practice on Reservations to Treaties, contained in document A/CN.4/L.783/Add.6.

4.5.3 *Status of the author of an invalid reservation in relation to the treaty* (continued)

Commentary (continued)

Paragraph (18) (continued)

2. The CHAIRPERSON suggested that the adoption of the paragraph be deferred until a solution was found to the problem raised at the previous meeting that was acceptable to all. The Commission should not give the impression that it was divided on the question.

It was so decided.

Paragraph (19)

3. Mr. NOLTE noted that the paragraph cited the views expressed during a debate in the Sixth Committee in 2005. It would also be useful to refer, for example in a footnote, to the equally lively debate in the Sixth Committee on the same question in 2010.

4. Mr. PELLET (Special Rapporteur) endorsed Mr. Nolte's proposal. Instead of a footnote, however, he suggested the insertion of a new paragraph, in which the debate would be briefly summarized. The point was not to enter into the details, but merely to say that the debate had been repeated, with very divided views, which had led the Commission to seek a compromise solution.

5. Sir Michael WOOD said that the sentence following the question asked of Member States in 2005 should specify that the views expressed by several members of the Sixth Committee had been those of 2005; that sentence and the following one should be put in the past tense. The new paragraph should be inserted after paragraph (20), since the latter also concerned the 2005 debate.

Paragraph (19), as amended, was adopted.

Paragraph (20)

Paragraph (20) was adopted, on the understanding that it would be followed by a paragraph (20 bis).

Paragraphs (21) to (29)

Paragraphs (21) to (29) were adopted.

Paragraph (30)

6. Mr. NOLTE said that the paragraph might be read as confirming the conclusions—referred to in paragraph (29)—of the Working Group on reservations established to examine the practice of human rights treaty bodies, which stated in its recommendation No. 7 that the State which formulated an invalid reservation remained a party to the treaty without the benefit of the reservation “unless its contrary intention is incontrovertibly established”.⁴⁵⁸ He recalled that it had been decided not to use the word “incontrovertibly” in the guideline under consideration.

7. Mr. PELLET (Special Rapporteur) agreed and proposed that the following phrase be inserted in

the second sentence: “although the Commission has deliberately omitted the word ‘incontrovertibly’, which in its view imposes too strict a criterion”.

Paragraph (30), as amended, was adopted.

Paragraphs (31) to (36)

Paragraphs (31) to (36) were adopted.

Paragraph (37)

8. Mr. PELLET (Special Rapporteur) proposed the insertion of the following sentence in the second footnote to the paragraph: “‘Inadmissibility’ means ‘non-permissibility’, see paragraphs 4 to 7 of the general introduction to Part 3 of the Guide to Practice.”

Paragraph (37), as amended, was adopted.

Paragraphs (38) to (40)

Paragraphs (38) to (40) were adopted.

Paragraph (41)

9. Mr. NOLTE, referring to the first sentence, said that he was not convinced that it was possible to speak of the “rigour” of a presumption. Either the words “rigour of the” should be deleted, or “rigour” should be replaced by “force”.

Paragraph (41), as amended, was adopted.

Paragraphs (42) and (43)

10. Mr. McRAE said that the word “First” at the beginning of paragraph (43) should be deleted, since no “second” followed.

11. Mr. FOMBA said that, in that case, the last sentence in paragraph (42), which indicated that an enumeration would follow, would also need to be deleted (“Several factors come into play”).

12. Mr. PELLET (Special Rapporteur) agreed to those two deletions.

Paragraphs (42) and (43), as amended, were adopted.

Paragraph (44)

Paragraph (44) was adopted.

Paragraph (45)

13. Mr. PELLET (Special Rapporteur) said that, in the second sentence of the first paragraph, the words “interpretative declaration” should be placed in quotation marks, because the declaration by Switzerland had proved to be a reservation. In the first sentence of the last paragraph, a footnote with a reference to the relevant guideline should be inserted after the phrase “owing to the relative effect of any reservation”.

Paragraph (45), as amended, and with a minor drafting change in the English text, was adopted.

⁴⁵⁸ HRI/MC/2007/5, p. 7.

Paragraph (46)

14. Mr. PELLET (Special Rapporteur) said that, in the last sentence, the words “Some members of the Commission” should be replaced by “The Commission”, since it had been agreed not to reflect the views of members, even minority positions, on second reading.

15. Mr. NOLTE said that in the current case, an important viewpoint was concerned, because the nature of the treaty was referred to in the Vienna Convention.

16. Mr. McRAE said that Mr. Nolte’s point was well taken. It had been agreed that minority views could be reflected on first reading, but since in the current case both first and second readings were concerned, States would not have an opportunity to consider the question. It should at least be specified that the Commission had decided not to include an explicit reference to the nature of the treaty.

17. Mr. PELLET (Special Rapporteur) said that this was not correct: that position had been duly indicated in plenary in 2010. However, he agreed to say that the Commission, upon reflection, had considered that the nature of the treaty should not be referred to explicitly. That would make it possible to evoke the existence of the problem without saying that the Commission had been divided on the subject. Mention could also be made in the new paragraph (20 *bis*) to the fact that several States had also supported that point of view.

18. Mr. NOLTE said that it would be preferable to delete the sentence rather than create the impression that the Commission was of the unanimous view that the nature of the treaty did not play any role. Perhaps the Special Rapporteur could include a reference to the nature of the treaty in the document, as he saw fit.

19. The CHAIRPERSON said he took it that the Commission agreed to delete the last sentence of the paragraph.

Paragraph (46), as amended, was adopted.

Paragraphs (47) to (50)

Paragraphs (47) to (50) were adopted.

4.6 *Absence of effect of a reservation on the relations between the other parties to the treaty*

Guideline 4.6 was adopted.

Commentary

Paragraphs (1) to (11)

Paragraphs (1) to (11) were adopted.

The commentary to guideline 4.6 was adopted.

4.7 *Effect of an interpretative declaration*

20. Mr. PELLET (Special Rapporteur) said that the title of the French text should be brought into line with the English text and should therefore read “*Effets d’une déclaration interprétative*”, as in guideline 4.6.

Guideline 4.7 was adopted.

Commentary

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.

The commentary to guideline 4.7 was adopted.

4.7.1 *Clarification of the terms of the treaty by an interpretative declaration*

Guideline 4.7.1 was adopted.

Commentary

Paragraphs (1) to (8)

Paragraphs (1) to (8) were adopted.

Paragraph (9)

21. Mr. NOLTE suggested that, in the third sentence, the word “impartial” should be replaced by “competent and independent” to describe the third party that objectively established the interpretation of the treaty.

22. Mr. McRAE was of the view that the word “competent” was sufficient, since it implied independence. He also proposed replacing the word “body” in the English text by “party”.

23. Sir Michael WOOD said that the word “competent” was ambiguous: did it mean “intellectually competent”, or did it mean “authorized”? It would suffice to say “given by a third party”.

24. Mr. CANDIOTI said that a third party was independent *per se*.

25. The CHAIRPERSON said he took it that the Commission decided to delete the word “impartial” and, in the English text, to replace the word “body” by “party”.

Paragraph (9), as amended, was adopted.

Paragraphs (10) to (12)

Paragraphs (10) to (12) were adopted.

Paragraph (13)

26. Mr. NOLTE said that the first name of the author cited in the first sentence should be given.

27. Mr. PELLET (Special Rapporteur) said that, in French, it was not common usage to give the first name of an author. To address the problem, he suggested recasting the beginning of the paragraph to read: “According to another view, on the one hand ...”. The name of the author could then be cited in a footnote in keeping with the usage in the various languages.

Paragraph (13), as amended, was adopted.

Paragraphs (14) and (15)

Paragraphs (14) and (15) were adopted.

Paragraph (16)

28. Mr. NOLTE suggested that the first footnote be deleted, since the proposition to which it referred was too abstract and general to be of any practical use.

Paragraph (16) was adopted with the deletion of the first footnote.

Paragraphs (17) and (18)

Paragraphs (17) and (18) were adopted.

Paragraph (19)

29. Mr. McRAE said that, in the first sentence, the words “of the Dispute Settlement Body” should be deleted.

Paragraph (19), as amended, was adopted.

Paragraphs (20) to (26)

Paragraphs (20) to (26) were adopted.

Paragraph (27)

30. Mr. NOLTE said that the third sentence, which stated that the Court paid little attention to the declaration by Romania, sounded derogatory. He proposed rewording it to read: “In its judgment, however, the Court merely noted the following with respect to the declaration by Romania”.

Paragraph (27), as amended, was adopted.

Paragraphs (28) and (29)

Paragraphs (28) and (29) were adopted.

Paragraph (30)

31. Mr. McRAE said that, in the English text, the words “minor key” were difficult to understand. He suggested replacing them by “subdued manner”.

Paragraph (30), as amended in the English text, was adopted.

Paragraphs (31) to (33)

Paragraphs (31) to (33) were adopted.

The commentary to guideline 4.7.1, as amended, was adopted.

4.7.2 *Effect of the modification or the withdrawal of an interpretative declaration*

Guideline 4.7.2 was adopted.

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to guideline 4.7.2 was adopted.

4.7.3 *Effect of an interpretative declaration approved by all the contracting States and contracting organizations*

Guideline 4.7.3 was adopted.

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

32. Mr. NOLTE said that the word “*véritable*” in the first sentence of the French text should be rendered by “true” rather than “genuine”.

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

Paragraphs (3) to (5)

Paragraphs (3) to (5) were adopted.

The commentary to guideline 4.7.3, as amended, was adopted.

33. Ms. ESCOBAR HERNÁNDEZ recalled that, at the 3121st meeting of the Commission, during the adoption of the commentary to guideline 4.1, she had evoked the problem posed by the use in the Spanish text of the expressions “*reserva establecida*” and “*establecimiento de una reserva*” to translate “established reservation” and “establishment of a reservation”. Following consultations, the Spanish-speaking members of the Commission had decided to retain the proposal which she had made at that meeting, namely to insert, after the title of each guideline of the Spanish text of the Guide to Practice in which either of those expressions appeared, an asterisk referring to a footnote with the following wording:

“* En las versiones oficiales del Artículo 21, de las Convenciones de Viena se utilizan los siguientes términos: ‘1. A reservation *established* with regard to another party in accordance with articles 19, 20 and 23’ (versión inglesa); ‘1. Une réserve *établie* à l’égard d’une autre partie conformément aux articles 19, 20 et 23’ (versión francesa); y ‘1. Una reserva *que sea efectiva* con respecto a otra parte en el tratado de conformidad con los artículos 19, 20 y 23’ (versión española).

“En la presente *Guía de la práctica* se ha optado por utilizar en la versión española los términos ‘reserva establecida’ y ‘establecimiento de una reserva’ a fin de homogeneizar los términos empleados en las versiones española, francesa e inglesa. No obstante, el empleo de estos términos se realiza en el entendimiento de que los mismos equivalen a la expresión ‘una reserva que sea efectiva’ en el sentido y con el significado que a dicha expresión le corresponde en virtud de las Convenciones de Viena.”

It was so decided.

34. The CHAIRPERSON invited the Commission to consider Part 5 of the Guide to Practice contained in document A/CN.4/L.783/Add.2.

5. *Reservations, acceptances of reservations, objections to reservations, and interpretative declarations in cases of succession of States* (A/CN.4/L.783/Add.2)

Commentary

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.

Paragraph (7)

35. Sir Michael WOOD said that the word “pleonastic” in the second footnote to the paragraph was not very elegant. Perhaps it could be replaced.

36. Mr. NOLTE suggested replacing it by “tautological”.

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

The commentary to Part 5 of the Guide to Practice, as amended, was adopted.

- 5.1 *Reservations in cases of succession of States*

- 5.1.1 *Newly independent States*

Guideline 5.1.1 was adopted.

Commentary

37. Mr. GAJA said that he had a problem in general with the commentary to guideline 5.1.1. The guideline contained two useful reminders: it indicated in paragraph 2 that a reservation formulated by a newly independent State when making a notification of succession must meet the conditions of permissibility set out in guideline 3.1; and it stipulated in paragraph 3 that the rules of procedure concerning reservations also applied in that case. However, there was nothing in the commentaries about those two paragraphs, which was very strange, since paragraph (16) of the commentary to the parallel provision in guideline 5.1.2 also concerned those questions. With regard in particular to paragraph 3 of guideline 5.1.1, it was important for the Guide to Practice to specify that newly independent States were free to formulate a new reservation when making a notification of succession, but that if they did, they must be aware that their notification of succession could not take effect immediately, because they needed to wait for acceptance by another State. He therefore suggested adding two paragraphs to the commentary to guideline 5.1.1, one similar to paragraph (16) of the commentary to guideline 5.1.2, and the other explaining what the implications were of the application of the procedural rules, in particular the fact that notification would not have an immediate effect.

38. Mr. PELLET (Special Rapporteur) said that Mr. Gaja’s remarks were entirely justified, and he was prepared to consult with him on the text of the two new proposed paragraphs for submission to the Commission.

It was so decided.

Paragraphs (1) to (20)

Paragraphs (1) to (20) were adopted.

- 5.1.2 *Uniting or separation of States*

Guideline 5.1.2 was adopted.

Commentary

Paragraphs (1) to (10)

Paragraphs (1) to (10) were adopted.

Paragraph (11)

39. Mr. PELLET (Special Rapporteur) said that, in the last sentence of the French text, the words “*bout de phrase*” should be replaced by “*membre de phrase*”.

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

Paragraphs (12) to (16)

Paragraphs (12) to (16) were adopted.

The commentary to guideline 5.1.2, as amended, was adopted.

- 5.1.3 *Irrelevance of certain reservations in cases involving a uniting of States*

Guideline 5.1.3 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 5.1.3 was adopted.

- 5.1.4 *Maintenance of the territorial scope of reservations formulated by the predecessor State*

Guideline 5.1.4 was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 5.1.4 was adopted.

- 5.1.5 *Territorial scope of reservations in cases involving a uniting of States*

Guideline 5.1.5 was adopted.

Commentary

Paragraphs (1) to (9)

Paragraphs (1) to (9) were adopted.

The commentary to guideline 5.1.5 was adopted.

- 5.1.6 *Territorial scope of reservations of the successor State in cases of succession involving part of a territory*

Guideline 5.1.6 was adopted.

Commentary

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to guideline 5.1.6 was adopted.

5.1.7 *Timing of the effects of non-maintenance by a successor State of a reservation formulated by the predecessor State*

Guideline 5.1.7 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 5.1.7 was adopted.

5.1.8 *Late reservations formulated by a successor State*

40. Mr. PELLET (Special Rapporteur) said that it was necessary to make an exception to a sacred principle and to change the title of the guideline, which was no longer in line with the Commission's current terminology. He proposed replacing it by "Late formulation of a reservation by a successor State".

The Special Rapporteur's proposal was adopted.

Guideline 5.1.8, as amended, was adopted.

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to guideline 5.1.8 was adopted.

5.2 *Objections to reservations in cases of succession of States*

5.2.1 *Maintenance by the successor State of objections formulated by the predecessor State*

Guideline 5.2.1 was adopted.

Commentary

Paragraphs (1) to (9)

Paragraphs (1) to (9) were adopted.

The commentary to guideline 5.2.1 was adopted.

5.2.2 *Irrelevance of certain objections in cases involving a uniting of States*

Guideline 5.2.2 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 5.2.2 was adopted.

5.2.3 *Maintenance of objections to reservations of the predecessor State*

Guideline 5.2.3 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 5.2.3 was adopted.

5.2.4 *Reservations of the predecessor State to which no objections have been made*

Guideline 5.2.4 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 5.2.4 was adopted.

5.2.5 *Right of a successor State to formulate objections to reservations*

41. Mr. PELLET (Special Rapporteur) proposed, in the title and in paragraph 3 of the French text, to write the word "droit" in Roman characters and not in italics. He also suggested that the text of the footnote whose reference was placed after the word "Right" be inserted in the commentary, either as a paragraph (1 *bis*) or at the end of paragraph (3).

The Special Rapporteur's proposal was adopted.

Guideline 5.2.5, as amended, was adopted.

Commentary

Paragraph (1)

42. Mr. PELLET (Special Rapporteur) said that, in the first sentence, the word "capacity" should be replaced by "right".

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (8)

Paragraphs (2) to (8) were adopted.

The commentary to guideline 5.2.5, as amended, was adopted.

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

Guideline 5.2.6 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 5.2.6 was adopted.

5.3 *Acceptances of reservations in cases of succession of States*

5.3.1 *Maintenance by a newly independent State of express acceptances formulated by the predecessor State*

Guideline 5.3.1 was adopted.

Commentary

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.

The commentary to guideline 5.3.1 was adopted.

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

Guideline 5.3.2 was adopted.

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to guideline 5.3.2 was adopted.

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

Guideline 5.3.3 was adopted.

Commentary

The commentary to guideline 5.3.3 was adopted.

5.4 *Legal effects of reservations, acceptances and objections in cases of succession of States*

Guideline 5.4 was adopted.

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

The commentary to guideline 5.4 was adopted.

5.5 *Interpretative declarations in cases of succession of States*

5.5.1 *Interpretative declarations formulated by the predecessor State*

43. Mr. NOLTE suggested that the guideline be numbered 5.5, since there was no guideline 5.5.2.

Mr. Nolte's proposal was adopted.

Guideline 5.5.1, renumbered 5.5, was adopted.

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

44. Mr. PELLET (Special Rapporteur) said that, in the penultimate sentence of the French text, the words “*la réglementation des déclarations interprétatives dans le Guide de la pratique*” should be replaced by “*les règles applicables aux déclarations interprétatives figurant dans le Guide de la pratique*”.

Paragraph (3), as amended in the French text, was adopted.

Paragraphs (4) to (7)

Paragraphs (4) to (7) were adopted.

The commentary to guideline 5.5, as amended, was adopted.

Part 5 of the Guide to Practice, as amended, was adopted.

45. The CHAIRPERSON invited the Commission to begin its consideration of the conclusions on the reservations dialogue, reproduced in document A/CN.4/L.783/Add.7, that would appear in the annex to the Guide to Practice.

ANNEX

CONCLUSIONS ON THE RESERVATIONS DIALOGUE (A/CN.4/L.783/Add.7)

First to fourth preambular paragraphs

The first to fourth preambular paragraphs were adopted.

Fifth preambular paragraph

46. Sir Michael WOOD said that it would be preferable to speak of the “Vienna Conventions” rather than the “Vienna Convention”.

47. Mr. HUANG asked whether the 1986 Vienna Convention was in force.

48. Mr. PELLET (Special Rapporteur) said that it was not.

49. Mr. HUANG said that the reference to “the considerable number of reservations that appear incompatible with the limits imposed by the law of treaties” went too far. He suggested the deletion of the word “considerable”.

The fifth preambular paragraph, as amended, was adopted.

Sixth preambular paragraph

50. Mr. HUANG said that he disagreed with the wording of the paragraph, and he suggested amending it to read “Aware of the difficulties that States and international organizations might face in assessing the validity of reservations”.

51. Mr. PELLET (Special Rapporteur) said that he would prefer the following formulation: “Aware of the difficulties that some States and international organizations face in assessing the validity of reservations”.

52. The CHAIRPERSON proposed amending the paragraph to read: “Aware of the difficulties posed by the assessment of the validity of reservations”.

It was so decided.

The sixth preambular paragraph, as amended, was adopted.

Seventh preambular paragraph

53. Mr. HUANG said that the paragraph should be deleted. Although he could agree in principle on the

utility of a pragmatic dialogue with the author of the reservation, he did not see why it needed to be specified in the preamble. First, it was not realistic because, given the considerable number of States and international organizations that formulated reservations, it was often impossible to hold such a dialogue in practice. Secondly, the paragraph was useless: it was obvious that, when a State formulated a reservation to a treaty that other States parties objected to, the States concerned would consult with the reserving State.

54. Mr. SABOIA, replying to Mr. Huang, said that the paragraph was simply referring to a constructive practice which could help solve diplomatic or political problems created by certain reservations. In so doing, the Commission was not adding anything new.

55. Mr. NOLTE said that the Commission might perhaps discuss the question in private consultations and resume consideration of the paragraph in public once it had reached an agreement.

56. Mr. PELLET (Special Rapporteur) disagreed with that proposal. The annex to the Guide to Practice, which contained the Commission's conclusions on the reservations dialogue, should be adopted without further delay, because it had already been the subject of a debate in plenary, during which Mr. Huang had not made any comment.

57. The CHAIRPERSON said he took it that the Commission wished to adopt the seventh preambular paragraph as it stood.

It was so decided.

The seventh preambular paragraph was adopted.

Eighth preambular paragraph

The eighth preambular paragraph was adopted.

The preambular paragraphs, as amended, were adopted.

First operative part

58. The CHAIRPERSON invited the members of the Commission to consider the operative part of the document, paragraph by paragraph, and recalled that paragraph 1 had already been adopted at an earlier meeting.

Paragraphs 2 to 9

Paragraphs 2 to 9 were adopted.

Second operative part

59. Sir Michael WOOD suggested the deletion, in the English text, of the word "undertake".

60. Mr. HUANG said that, in his view, the recommendation was useless, because States and international organizations already knew how to deal with the problems raised by reservations.

61. The CHAIRPERSON said he took it that the Commission wished to adopt the second operative part with the proposal by Sir Michael.

It was so decided.

The second operative part, as amended in the English text, was adopted.

The conclusions on the reservations dialogue, as amended, were adopted.

62. The CHAIRPERSON invited the members of the Commission to begin their consideration, paragraph by paragraph, of the introduction to the Guide to Practice, contained in document A/CN.4/L.783/Add.8.

(a) *Introduction (A/CN.4/L.783/Add.8)*

Paragraph (1)

63. Mr. HUANG said that paragraph (1) could not be adopted at the current meeting, because it stated that "The Guide to Practice on Reservations to Treaties consists of guidelines that have been adopted by the International Law Commission and are reproduced below", but all those guidelines had not yet been adopted. That was where the Commission should begin.

64. The CHAIRPERSON said that he understood Mr. Huang's concern and suggested that the Commission defer the adoption of paragraph (1) and begin with the adoption of paragraph (2).

It was so decided.

Paragraph (2)

65. Mr. GALICKI said that the Vienna Conventions should be presented in chronological order, both in paragraph (2) and throughout the Guide to Practice. On a more general matter, he noted that those Conventions were placed on an equal footing, although they were different from the point of view of international law, since the 1986 Vienna Convention was still not a binding source of international law; that should perhaps be indicated.

66. Sir Michael WOOD said that he agreed with Mr. Galicki's first proposal. With regard to his second proposal, the fact that the 1969, 1978 and 1986 Conventions were placed on an equal footing did not really pose a problem, because the Guide to Practice referred not so much to those instruments as to the rules contained therein, which were customary rules as well as conventional rules. He also wished to make two suggestions: in the third line of the English text, the word "permissibility" should be replaced by "validity" so as to cover both the substantive and the procedural validity of reservations; and the words "Despite frequent assumptions to the contrary" at the beginning of the second sentence should be deleted, because they were out of place in the introduction. On a more general point, he said that the English translation contained many inaccuracies; he would submit proposals for corrections to the secretariat.

67. Mr. SABOIA said that it should perhaps be indicated in a footnote that the 1986 Vienna Convention was not yet in force.

68. The CHAIRPERSON, noting the late hour, suggested that the adoption of the introduction be continued at the next meeting.

The meeting rose at 6.05 p.m.

3125th MEETING

Thursday, 11 August 2011, at 10 a.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. 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.

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

CHAPTER IV. *Reservations to treaties* (concluded) (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*)

(a) *Introduction* (continued) (A/CN.4/L.783/Add.8)

1. The CHAIRPERSON invited the Commission to resume its consideration of chapter IV of the draft report, in particular the introduction to the Guide to Practice, contained in document A/CN.4/L.783/Add.8. He recalled that a number of amendments to paragraph (2) had been proposed at the previous meeting.

Paragraph (2) (*concluded*)

2. Mr. HUANG said that during the current session, he had generally refrained from commenting on problems of a linguistic nature. As someone from a country with a tradition of seeking the middle ground, he had taken a low-key approach on certain issues. That did not mean, however, that he would compromise on issues of principle.

3. For China, the Taiwan question was a matter of principle. At an earlier meeting, he had pointed out an error in the Commission's treatment of that question and proposed a reasonable solution. That solution had been rejected, however, perhaps out of a desire to oppose China or for some other ulterior motive. Whatever the case, that was unacceptable.

4. Three of the Vienna Conventions had been cited in paragraph (2) of the introduction to the Guide to Practice, but only two of them had entered into force. When, at the previous meeting, he had queried the status of the 1986 Vienna Convention, the Special Rapporteur had first informed the Commission that it had entered into force but had subsequently had to admit his error. Only 11 international organizations were parties to the 1986 Vienna Convention, yet the Commission had spent weeks discussing the issue of reservations by international organizations.

5. The Sixth Committee had repeatedly asked the Commission to shorten its reports. The excessive length of the commentary to the guidelines contained in the Commission's current report went against the requirements of the General Assembly, imposed an unbearable burden on the Secretariat and made it difficult for members of the Commission to analyse the text in a rational and scientific manner. Was it really necessary to have 50 paragraphs of commentary to a single guideline? A commentary that was 800 pages long would not be widely read; shortening it to 200 pages would result in significant savings.

6. In October 1997, at a colloquium held at United Nations Headquarters to mark the fiftieth anniversary of the establishment of the Commission, he had acknowledged the Commission's achievements but had also referred to the very sharp criticism of some of its work by the international community. Now, as a member of the Commission, he found that the problems were even more serious than he had imagined. What was the Commission's mandate? What sort of legal guidance should it provide to Member States? Instead of wasting human and material resources, the Commission should bring rapidly to a close its consideration of the item on reservations to treaties.

7. His comments at the current and previous meetings might have offended some members, but everything he had said was true. He took full responsibility for all those comments, which he wished to have placed on record and included in the Commission's report to the Sixth Committee.

8. The CHAIRPERSON said that Mr. Huang's statement had been noted.

Paragraph (2) was adopted, with the amendments put forward at the previous meeting.

Paragraphs (3) and (4)

Paragraphs (3) and (4) were adopted.

Paragraph (5)

9. Mr. GAJA said that the opening phrase of the second sentence, "Like the Vienna rules themselves", should be deleted, since it was not appropriate to place the guidelines on the same level as the Vienna Convention.

10. Mr. PELLET (Special Rapporteur) said that he agreed with that remark and proposed rewording the beginning of the sentence to read: "The Vienna rules have a residual nature; the same is true, *a fortiori*, for those contained in the Guide to Practice" [*Les règles de Vienne*]