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## Sixth Committee

**Summary record of the 19th meeting**
Held at Headquarters, New York, on Friday, 31 October 2003, at 3 p.m.

*Chairman*: Mr. Baja . . . . . (Philippines)

## Contents





03-59166 (E)

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*The meeting was called to order at 3 p.m.*

**Agenda item 158: International convention against the reproductive cloning of human beings** (*continued*)

1. **Mr. Dolatyar** (Islamic Republic of Iran), speaking on behalf of the States members of the Organization of the Islamic Conference, said that those States had decided to introduce a procedural motion under rule 116 of the General Assembly's rules of procedure, in which they would request the Committee to defer its consideration of the item in question until the sixtieth session, since they were concerned about the possible lack of a consensus on the Convention at the current session.

2. Without wishing to prejudice national positions on the question, the States he represented were distressed by the spectacle of discord in the Committee and therefore hoped that all delegations would appreciate the complex nature of the issue and would support the motion.

**Agenda item 152: Report of the International Law Commission on the work of its fifty-fifth session** (*continued*) (A/58/10)

3. **Ms. Bole** (Slovenia), referring to the topic "Reservations to treaties" said that, while the Commission was right in holding that the basic provisions on such reservations were laid down in the Vienna Conventions on the Law of Treaties, non-binding provisions, in the form of a guide to practice, would be extremely useful and would fill gaps in those Conventions, which did not regulate either interpretative declarations or objections to reservations. The draft guidelines on the withdrawal of reservations and the model clauses were most welcome, especially as the model clauses would serve as examples, which could be used as they stood or adapted, when States or international organizations were negotiating a treaty. The explanatory note on model clauses was also helpful and, in the future, it might be wise to include additional notes on other questions. Since the Guide to Practice required further clarification in order to ensure that the correct procedure was always followed, the commentaries to the guidelines should exceptionally form an integral part of the Guide.

4. The definition of objections to reservations proposed by the Special Rapporteur in chapter II of his eighth report (A/CN.4/535/Add.1) was acceptable, because it was based on the Vienna Conventions and broad enough to cover a miscellany of intentions on the part of States or international organizations. The rules on the enlargement of a reservation could indeed be brought into line with those applicable to late formulation, which had been adopted by the Commission in 2001. Her Government shared the view of the Special Rapporteur that, in the event of a State or international organization displaying bad faith, the opposition of a single State would prevent enlargement of the reservation.

5. The Commission should continue to examine the topic "Unilateral acts of States" and prepare guidelines or recommendations on them, because the number of cases involving such acts which had been considered by the International Court of Justice confirmed the existence and hence the importance of a practice that gave rise to international obligations and entailed a commitment on the part of States.

6. **Ms. Taracena Secaira** (Guatemala) said that the paucity results achieved by the Commission in respect of the topic "Unilateral acts of States" gave cause for concern. Admittedly, the process had been fraught with difficulties, but the Commission's decision in 2002 to adopt a completely new approach had apparently led to the Special Rapporteur producing a sixth report (A/CN.4/534) which consisted solely of a general, preliminary study of recognition, one of the four classic kinds of unilateral act. The report, like its predecessors, was excellent and there would be no cause for alarm if the intention were to follow it with further reports on the three other types of unilateral act. That did not, however, appear to be the plan and the recommendations of the new Working Group, as set out in paragraph 305 of the Commission's report (A/58/10) were somewhat unsatisfactory. The definition of a unilateral act in recommendation 1 was at odds with the Special Rapporteur's definition in paragraph 81 of his fifth report (A/CN.4/525), which was much better. She therefore wondered why it had been abandoned. The recommendation included the term "consent", which clearly implied the existence of a bilateral relationship.

7. Recommendation 2 was perplexing, since conduct of States which was similar to a unilateral act covered a wide range of measures, ranging from unilateral acts which were not autonomous, since they were governed by the rules of general international law, through

unilateral acts specifically provided for in treaties and relating to the institutions created by the latter, to estoppel and failure to act, although they did not fit the definition in recommendation 1. Determining the unilateral acts on which draft articles were to be proposed, as advocated in recommendation 3, would render the definition contained in recommendation 1 more or less useless and any study carried out in pursuance of recommendation 2 would be a complete waste of time.

8. It would be better, as a first stage, to ignore the existing draft articles and to list the acts to be taken into consideration, in other words, autonomous acts. Then the Commission should agree on whether those acts comprised only express acts or also, in some circumstances, abstention and silence, before deciding whether or not to include implicit acts and estoppel and also whether it was necessary to regulate solely acts which could be named, or also "unnamed" acts. In other words, the next step would be that of determining whether the list of unilateral acts should be open-ended and whether it was essential to adopt general rules applicable to all unilateral acts in the list, or specific rules for each act. If the Commission were to opt for both general and specific rules, it would then have to ascertain whether each act were governed by general rules, specific rules or a mixture of both.

9. Turning to the draft guidelines on reservations to treaties, she said it would be wise to add the phrase "whose inclusion in multilateral treaties is recommended" at the end of the first sentence of the explanatory note (A/58/10, para. 368). The first paragraph of the commentary to the note should be expanded to include observations on the nature of the draft guidelines, to the effect that they could not be of much normative value but were rather a code of recommended practices, as well as a statement that such recommendations might be of assistance in interpreting the Vienna Conventions, since some of the draft guidelines, such as draft guideline 1.1.1, effectively amounted to interpretations thereof.

10. With regard to the model clauses, the sentence "If the State has not set that date, the withdrawal shall take effect X [months][days] after the date of receipt of the notification [by the depositary]" should be added to the end of model clause C. The model clauses themselves should be placed in an annex, as the Special Rapporteur had suggested. Although the commentaries to the draft guidelines provisionally adopted in 2003 contained material that was of great historical interest, they should really be confined to a description of the manner in which the draft guidelines should be interpreted and applied.

11. As for the draft guidelines which had been discussed, but not adopted in 2003, the second version of draft guideline 2.6.1 contained in footnote 221 of the Commission's report was preferable to that proposed by the Special Rapporteur in paragraph 363, because it was neutral with regard to the permissibility of objections to reservations. Despite the ruling of the European Court of Human Rights in the *Belilos* case, the Special Rapporteur was right in contending that an objection with a "super-maximum" effect was invalid. Similarly, she fully concurred with his opinion regarding "quasi-objections". It was vital to distinguish between an objection to a valid reservation and an objection to a reservation which was invalid because it was incompatible with the purpose of the treaty in question. Strictly speaking, the second kind of objection might be unnecessary, if the position were taken that a State which accompanied its act of accession to a treaty with a reservation which, for the aforementioned reasons, was invalid, could not be deemed to be a party to that treaty.

12. The Special Rapporteur's intention to submit a draft guideline that would encourage objecting States to supply the reasons for formulating their objections was excellent, since that was a highly desirable tendency. For that reason, the Commission's support for that proposal was laudable. Paradoxically, the very cases in which it was of paramount importance to specify the grounds for an objection were those where, in the opinion of the objecting State, the reservation to which the objection was being entered was impermissible.

13. **Mr. Tavares** (Portugal) said that the International Law Commission was to be commended for its study of unilateral acts, which played an important role in international relations. At the current stage, more information should be gathered on State practice in that field. It would be preferable for the Commission to focus on the general and specific rules applicable to the various types of so-called *strictu senso* unilateral acts. Another issue that deserved consideration was the fact that making unilateral acts subject to a treaty regime might jeopardize their autonomous nature and hence the autonomous nature of a source of international law.

14. The steady progress made on the issue of reservations to treaties, especially the adoption in 2003 of 11 draft guidelines on the withdrawal and modification of reservations, had been most satisfying. Nevertheless, it was doubtful whether enlargement of the scope of reservations after their formulation was permissible. The reservations regime established by the Vienna Conventions on the Law of Treaties served the purposes for which it had been created and expanding it in the manner proposed would be incompatible with those purposes. It could almost be said that such a guideline would be inconsistent with the object and purpose of the Vienna Conventions, because reservations were and should remain an exception to a treaty. The Commission should not attempt to codify a definition of "objection to a reservation", since articles 20, paragraphs 4 (b) and 5 and article 21 of the Vienna Convention were sufficient in that regard, but it should pursue its examination of State practice.

15. His Government would do its best to provide the Commission with the information on groundwater required for its consideration of the topic "shared natural resources".

16. **Mr. Lammers** (Netherlands) noted that, although work on the complex topic "unilateral acts of States" had begun in 1996, the Commission had not yet moved beyond discussion of methodology to the drafting of specific articles. Furthermore, the topic had been redefined to include not only unilateral acts *strictu senso*, what might become the subject of draft articles, but also the conduct of States which might produce legal effects similar thereto, for the purpose of including guidelines or recommendations. His delegation would prefer that the Commission should aim for the elaboration of draft articles in both cases; the General Assembly could then decide on their appropriate legal form.

17. To maintain that the topic was merely a sociological reality and was not ripe for codification was to ignore the jurisprudence of the International Court of Justice; the *Nuclear Tests* cases made it impossible to deny that unilateral acts were a legal institution and could produce legal consequences. However, given the complexity of the subject matter, the Special Rapporteur had rightly chosen to begin analysing the various "classic" unilateral acts on the basis of rules applicable to all of them.

18. The Special Rapporteur had begun with recognition as a particular type of unilateral act. While other unilateral acts remained to be considered, such as promise, renunciation and protest, it seemed to him that in dealing with recognition alone, the Special Rapporteur had already covered a wide range of rules which might be applicable to other types of unilateral acts. The dividing lines between the various acts were often blurred. It might be helpful to draw up a matrix with, horizontally, the various categories of unilateral acts and, vertically, the legal issues that needed to be addressed.

19. Lastly, with regard to State practice, the response to the Commission's questionnaire had been very limited indeed. In his experience, it was extremely difficult to trace and identify relevant practice. His delegation had made an effort in its response to the Commission's earlier, more general questionnaire by providing the example of a declaration relating to a North Atlantic Treaty Organization training exercise. His delegation had also referred to the recognition of the new States which had emerged from the dismemberment of the former Yugoslavia and the disintegration of the Soviet Union.

20. Turning to the topic "Reservations to treaties" he said that although the Special Rapporteur's work on the practical aspects of the topic was to be commended, it was time, after almost 10 years and eight reports, for the work to be nearing its conclusion.

21. The Special Rapporteur made a good case for defining "objection", but more germane was the question of the definition to be used. Seemingly on the basis of article 2, paragraph 1 (d), of the Vienna Conventions, draft guideline 2.6.1 distinguished between two kinds of objection on the part of the objecting State. His delegation questioned, however, whether the proposed definition fully encompassed all the intentions with which States formulated objections: it focused too much on the contractual aspect of objections while neglecting the policy aspect, as expressed in contemporary practice, under which objections did not preclude the entry into force of a treaty between the reserving and the objecting State unless the latter explicitly expressed a wish not to enter into treaty relations with the reserving State. Little use had been made of the option of not entering into treaty relations, one reason being that reactions to reservations to the growing number of normative treaties, such as human rights instruments or

environmental treaties, often focused primarily on the proper interpretation of a given provision rather than on the specific inter se application of the provision concerned between the reserving and the objecting State. Objections that related to the qualitative and substantive aspects of the reservation should not be excluded from the Draft Guide to Practice and he strongly urged the Special Rapporteur to reconsider the draft guideline. As indicated in paragraph 35 of the Commission's report, it was unwise to rely too much on the text of the Vienna Conventions in that respect. A broader definition would be more realistic, if a definition was needed at all.

22. As to the legal implications of an objection, his delegation would agree that the legal effect was determined by the intention of the objecting State, which should therefore thoroughly consider how best to formulate the objection. The question concerning the advantages or disadvantages of stating clearly the grounds for objections to reservations was a policy issue rather than a legal question. There was no legal obligation to do so and there might be reasons not to elaborate. An indication of the part of the reservation to which objection was made should be sufficient. Whether it was desirable to state the grounds for the objection was a different issue. In his delegation's view, it was desirable, but State practice was not very consistent in that regard. Justifying the objection could have an informative or even an educational value. Moreover, the indication of what was not acceptable to the objecting State could also amount to relevant State practice, should questions concerning the development of customary law arise.

23. His delegation's view on the issue of the enlargement of the scope of a reservation was identical to that concerning late reservations: the time of expressing consent to be bound was the latest moment at which reservations could be formulated, otherwise a very undesirable flexibility would be introduced into the law of treaties.

24. **Mr. Ehrenkrona** (Sweden), speaking also on behalf of the other Nordic countries, Denmark, Finland, Iceland and Norway, said that the issue of reservations to treaties was of particular importance; the Commission's work on the topic should be carried further. The draft Guide to Practice would be of practical value to Governments and others. He welcomed the fact that the Special Rapporteur had begun the difficult task of scrutinizing the legal practice pertaining to objections to reservations and that he intended to submit draft guidelines on the "reservations dialogue". An in-depth study on the practice relating to the permissibility or validity of reservations, which was closely bound up with objections, would also be welcome.

25. The Nordic countries believed that the definition of "objections" contained in draft guideline 2.6.1 was too narrow. It was their practice to object to reservations considered incompatible with the object and purpose of a treaty, especially a human rights treaty, on the grounds that incompatible reservations were ipso facto invalid and therefore impermissible: tacit acceptance by other States would not "heal" the impermissibility and make the reservations permissible. It could be argued that such objections were not really necessary because the reservations in question had no legal effect in any case. However, they had the advantage of spelling out the views of other parties to the treaty, thus bringing the matter more clearly into the public domain. It made both the reserving State and other States parties aware of the fact that, being incompatible with the object and purpose of the treaty, the reservation must be considered null and void. Indeed, to allow impermissible reservations could seriously undermine the integrity of treaties. Such major human rights instruments as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the Convention on the Rights of the Child could be seriously weakened by States whose ratifications were combined with manifestly impermissible reservations.

26. It did not necessarily follow that the State that had made an impermissible reservation would not be in a treaty relation with those which had objected to that reservation. The Special Rapporteur had, however, wholly excluded from his definition of objections those directed at invalid reservations, with the effect that the treaty relations between the reserving and the objecting State remained in force without the reserving State benefiting from its reservation. The Nordic countries and an increasing number of other States consistently made objections in relation to invalid reservations to human rights treaties. A study conducted by the Finnish foreign ministry in 1998 had identified 33 such objections; according to the Danish foreign ministry, that figure had increased to 64 to date. To exclude such

objections from the scope of the definition of objections, therefore, would be to disregard an important part of existing State practice and the practice of the European Court of Human Rights.

27. With regard to the specific question raised by the Commission concerning the *Mer d'Iroise* case, the Nordic countries believed that the intention of the State that performed a unilateral act with regard to a treaty, whether a reservation, an objection or merely an unconditional interpretative declaration, was certainly the essential element as far as the purported and factual effect of the act was concerned. There was, however, no need to assess such possible effects in detail in order to produce a valid definition of what should constitute an objection. The question of purported effects could be dealt with separately. The Nordic countries could therefore agree to the definition proposed in paragraph 363 of the Commission's report, which would include situations in which an objecting State pointed out that a given reservation was null and void.

28. The Nordic countries shared the Special Rapporteur's view that States and organizations should be encouraged to state their grounds for objecting to reservations by other States and organizations and would welcome a draft guideline to that effect. Objections should be specific and transparent, especially where an impermissible reservation was considered incompatible with the object and purpose of a treaty. Indeed, objecting States should be encouraged to indicate not only their reasons for but also the desired effect of their objections in the text of the objections themselves.

29. With regard to the question of modification of reservations with the purpose of enlarging their scope, the Nordic countries considered that, although the situation was rather rare, such modifications could be dealt with in the same way as late reservations. Draft guideline 2.3.5, as currently drafted, would fulfil that purpose, together with an adaptation of draft guideline 2.3.3.

30. **Mr. Braguglia** (Italy) said that his delegation, while appreciating the quality of the studies carried out on reservations to treaties, shared the concern of others about the timescale that the Commission foresaw for dealing with what were, from the practical point of view, the most important issues. It seemed that it would not start to deal even at its next session with objections to reservations that were incompatible with the object and purpose of a treaty.

31. The definition of objections to reservations, if there was any need for one, should include all the negative reactions that a State might have concerning reservations, whether with regard to the content or the fact that they were late. The effects of objections, meanwhile, should remain as defined in the Vienna Convention on the Law of Treaties. Even if that was one of the least satisfactory parts of the Convention, the Commission should, in accordance with its mandate, make no changes to the Vienna regime.

32. Imposing a requirement that the grounds for objections should be stated would be useful, since it would help the reserving State to better understand the wishes of the objecting State. Such rules seldom produced any significant practical effect, however.

33. The draft guideline concerning the enlargement of the scope of a reservation seemed to be in line with the draft guideline already adopted by the Commission under which, in accordance with the practice of some depositaries, a State could make a late reservation if no other contracting State made an objection as to the lateness of that reservation. It would be logical for a similar rule to be established with regard to modifications of reservations with the purpose of enlarging their scope.

34. **Mr. Abraham** (France), referring to the topic "unilateral acts of States", expressed doubts about the approach adopted by the Special Rapporteur: the plethora of studies undertaken could delay the adoption of draft articles setting out the general principles relating to the topic. As recommended by the Working Group, therefore, the Special Rapporteur should submit as complete a presentation as possible of the practice of states in respect of unilateral acts. Since it would be a demanding task, the expertise available in the Secretariat would also be useful. His delegation also endorsed the Working Group's recommendation concerning the definition of a unilateral act, namely that it was a statement expressing the will or consent by which a State purported to create obligations or other legal effects under international law. Such terminology clearly emphasized the crucial point of the definition, which was the State's intention, as well as incidentally indicating that a unilateral act might have legal effects in addition to the creation of obligations, such as, for example, the effect of retaining or even

acquiring rights. The definition should also highlight the importance of autonomy in determining whether the act in question was purely unilateral. To qualify as such, the act should produce legal effects independent of any manifestation of will by another subject of international law.

35. He was not in favour of the Working Group's second recommendation, which would extend the study to the conduct of States that could create obligations "similar to those of unilateral acts": even though there might be no practical distinction between acts and conduct having similar legal effects, to consider both would considerably delay the already slow progress of the work on the topic, which had begun in 1997. The Working Group had also suggested that the study of conduct could lead to the adoption of guidelines, while unilateral acts would be dealt with, more traditionally, by draft articles accompanied by commentaries. Since the legal effects were similar, the need for such different approaches was not clear. The Commission should therefore restrict its work to the consideration of unilateral acts *strictu senso*. However, there was no reason why it should not discuss, in the commentary, conduct with legal effects similar to those of unilateral acts.

36. After expressing appreciation for the work of the Special Rapporteur and the Commission in formulating 11 new guidelines on reservations to treaties, he endorsed the view expressed by some members of the Commission that conditional interpretative declarations were nothing more than a particular category of reservations. Even if it was difficult, as the Special Rapporteur had said, to determine whether the modification of a conditional declaration had the effect of limiting or extending its scope, the modification could normally not be effected after a State had expressed its consent to be bound. The problem posed by the modification of a conditional declaration was therefore identical to that posed by the late formulation of a reservation, as was made clear by draft guideline 2.4.10. The Special Rapporteur had adopted the right approach in deciding to continue to examine conditional declarations and reservations separately until the question of their lawfulness and respective effects had been determined: there might prove to be some differences between the two in that regard. Even if there were, however, that was no justification for retaining separate guidelines when the regime of conditional declarations was identical in law to that of reservations.

37. With regard to the enlargement of the scope of a reservation, it seemed that such a possibility went beyond the time limit set for the formulation of a reservation under article 19 of the Vienna Conventions. He did not, however, share the view expressed by some members of the Commission that the enlargement of the scope of a reservation necessarily constituted an abuse of rights that should not be authorized, unlike the late formulation of a reservation, which could be made in good faith. The draft Guide to Practice should mention the possibility of enlargement, while at the same time clarifying the legal uncertainties surrounding it. Mention should be made of the fact that, although fortunately unusual, attempts to enlarge the scope of a reservation existed in treaty practice. As the Special Rapporteur had shown, it was less a case of abuse of rights than of a desire to take into consideration technical constraints or specific aspects of internal law. That did not mean, of course, that such enlargement was lawful. Furthermore, the possibility of enlarging the scope of a reservation would, under the Special Rapporteur's proposal, be subject to very strict conditions: as draft guideline 2.3.5 stated, such an enlargement would be subject to the "rules applicable to late formulation of a reservation". In other words, a single objection by a party to the treaty could halt the enlargement of the scope of the reservation. The draft guideline thus struck the right balance by not encouraging the practice but permitting it conditionally in order to give a State acting in good faith an option besides the denunciation of the treaty in question. The draft guideline could, however, be improved. It should, for example, contain a definition of enlargement and specify the effects of any objection made to it.

38. The 1969 and 1986 Vienna Conventions contained no definition of objections to reservations. Nevertheless, it was possible to discern the principal elements of such a definition from articles 20 and 21 thereof, and the Special Rapporteur's proposed definition in draft guideline 2.6.1 was entirely in line with those provisions. However, since there had been some objections to that definition, the Commission had requested the comments of States. During the discussion, some members of the Commission had considered that a party objecting to a reservation could have an intention other than that of blocking the effects that the reservation was intended to produce. They

therefore considered that the definition should be broadened to take such cases into account.

39. An objection was a reaction to a reservation intended to make the effects of the reservation inoperative. The intention of the party reacting to the reservation was therefore determinant for the legal characterization of that reaction, as emphasized by the arbitral tribunal in the *Mer d'Iroise* case.

40. The evaluation of the intention of the objecting State took place in a specific framework. For example, the reaction of a party seeking to modify the content of a reservation could not be classified as an objection. The objection should be characterized by the declared intention of the State to produce one of the objective effects set out in the Vienna Conventions: it should either make the provision to which it referred inapplicable or prevent the entry into force of the treaty between the parties involved. In that perspective, it was useful to know the intentions of the objecting State.

41. His delegation considered that a narrow definition of objections to reservations had several advantages. It responded to the aim of the Guide to Practice, which sought to supplement the provisions of the Vienna Conventions without modifying their spirit. In essence, a strict definition of objections left more room for what the Special Rapporteur referred to as "reservations dialogue"; in other words, the discussions between the author of a reservation and its partners, intended to encourage the former to withdraw the reservation.

42. **Mr. Jia** Guide (China), referring to the topic "International liability for injurious consequences arising out of acts not prohibited by international law", said that his delegation supported the Commission's study on allocation of loss and considered that a uniform scheme should be elaborated as soon as possible. The report of the Special Rapporteur had revealed some common features in existing liability regimes with regard to allocation of loss from transboundary harm. Conditions were therefore in place for an extensive study on the topic, including an examination of national legislations and domestic and international practice. The proposed regime should provide a framework of principles for the allocation of loss among participants in a high-risk activity, but it should be relatively flexible, allowing countries enough latitude to resolve their own disputes. His delegation endorsed the proposals made in the Special Rapporteur's report and believed that they should be expanded and adjusted by the Commission based on a further survey of the relevant practices.

43. The supplementary liability of the State should consist principally in taking preventive measures and establishing funds for the equitable allocation of loss, rather than assuming residual liability when the responsible party was financially incapable of providing compensation. Flexibility was called for with regard to the question of mandatory insurance for high-risk activities, because the diversity of national legal systems and economic conditions was not amenable to the implementation of a rigid rule. Moreover, since the Commission had agreed on the residual nature of the proposed regime for allocation of loss, it should be without prejudice to existing national practices concerning liability. Primary liability should be allocated to the person who directly commanded and controlled the hazardous activity. In the absence of a waiver clause, there should be presumption of a reasonable causal link between the actions of that party and the injurious consequences.

44. With regard to reservations to treaties, his delegation agreed that enlargement of the scope of reservations should be treated in the same way as late formulation of a reservation, since it was equivalent to a new reservation of larger scope. The provisions contained in the draft guidelines should apply: in other words, the State party could resort to late formulation of a reservation or enlargement of its scope, provided the other States parties raised no objections. That apparently contradicted the relevant provisions of the Vienna Convention on the Law of Treaties, which allowed a State to submit its reservations only "when signing, ratifying, accepting, approving or acceding to a treaty". However, freedom to accede to a treaty was a fundamental principle of the law of treaties. Since any enlargement of reservations was subject to the acceptance of the other parties, it would not have the effect of encouraging such enlargements.

45. Regarding objections to reservations, there could be two kinds: a State party could claim that the reservation was inadmissible by invoking article 19 of the Vienna Convention on the Law of Treaties or it could deem a reservation admissible but, nonetheless, formulate an objection on other grounds. In practice, a State party would not normally specify the grounds for its objection. Such general objections to reservations should therefore be governed by the provisions of the Vienna Convention; in other words, the whole treaty, or

the provisions to which the reservation related, would not apply in the relations between the reserving State and the objecting State. However, when a State raised an objection to a reservation under article 19, it could lead to a unilateral decision that the reservation was inadmissible. In the event of a dispute about the admissibility of a reservation, the legal effects of objections to reservations under article 21 of the Vienna Convention would not apply immediately. The parties should first endeavour to resolve their dispute; but, if the dispute defied solution or if a party simply ignored it, any objections to reservations should continue to be governed by the aforementioned provisions. An objecting State's unilateral claim that the whole treaty should enter into force in its relations with the reserving State, based on its opinion that the reservation was inadmissible, would have no legal effect and would not be accepted in practice. Moreover, the silence of the reserving State should not be interpreted as acceptance of the objections. Hence, the definition of objections should state clearly that objections to reservations could only produce the legal effects defined in the Vienna Convention directly or indirectly.

46. Lastly, with regard to the topic "Unilateral acts of States", his delegation found acceptable the scope of the topic as defined by the Commission. It hoped that draft articles or guidelines could be prepared at an early date in order to clarify the legal implications and effects of such acts, since that would make a significant contribution to efforts to regulate international practice and reduce international disputes.

47. **Mr. Wada** (Japan), referring to the topic "Reservations to treaties", said that the Special Rapporteur had expressed the intention of introducing the guidelines for a "reservations dialogue" in his next report. The modality of such a dialogue should not be predetermined, as there were many ways in which States could explain their intentions with respect to a reservation or objection.

48. Japan essentially supported the view expressed by many members of the Commission, and elaborated by the arbitral tribunal in the *Mer d'Iroise* case, that the intention of a State making an objection to a reservation should be the basis for determining the nature and effect of such an objection.

49. There was some validity to the view that the Vienna Convention on the Law of Treaties did not provide sufficient grounds for deciding whether a statement made by a country should be regarded as an objection. Nevertheless, articles 20, paragraph 4, and 21, paragraph 3, could provide a set of guidelines to assist countries in determining the legal effects of a reservation and, consequently, the application of treaty obligations between the parties concerned. To fully ascertain the nature of a statement made by a State in response to another State's reservation, it was essential to consider the former's intention. That approach would make it possible to determine whether that State intended not to apply the part of the treaty to which the reservation related, whether it intended to block the application of the entire treaty in relation to the State making the reservation, or whether it was simply making a comment that had no legal effect with regard to the reservation. It was also important to avoid making a judgement based on the mere presence of the terms "objection" or "object" in the statement. Statements varied in form and it was neither appropriate or necessary to establish a standard format. The drafting of an article that would exclude some statements from the category of objections on the grounds that they did not meet certain formal requirements would require careful discussion.

50. As currently formulated, draft guideline 2.6.1 provided an appropriate description of an objection. The idea of restricting the scope of an objection by simply extracting the related articles from the Vienna Convention had its critics, but the draft article proposed in paragraph 363 of the Commission's report could provide a basis for future consideration. Nonetheless, the new draft article might eliminate the possibility of not applying all the articles of a treaty between the parties, which was permitted by article 21, paragraph 3, of the Vienna Convention.

51. Lastly, it was important to bear in mind the actual practice of States in formulating reservations, as well as the ways in which States examined and objected to reservations. It had become increasingly difficult for each State to follow and assimilate all the reservations made by other States, because the number of treaties had increased dramatically in recent years. Consequently, it was useful for States with common interests to share information on reservations made by other States. For example, the monitoring work conducted by the Council of Europe on reservations made by both members and non-members of the Council was effective and useful.

52. **Mr. Aurescu** (Romania), referring to the topic "Responsibility of international organizations", said that his delegation welcomed the definition of the term "international organization" as those organizations possessing "international legal personality", which avoided the question of the responsibility of non-governmental organizations, since the latter were not yet considered subjects of international law.

53. His delegation considered that a general rule on the attribution of conduct to international organizations should contain a reference to the "rules of the organization"; the latter could not be clearly differentiated from international law and could offer important information on the obligations of international organizations, as well as on the competencies of the various organs of an organization. In addition to the concept of international legal personality, the Special Rapporteur should also take into account the concept of "international legal capacity", particularly with regard to the attribution of conduct. The rules of international organizations were likely to define the precise limits of the international legal capacity of each organization; in other words, the range of rights and obligations conferred on an organization by its member States. The Commission should also compare the situation of an organization acting *intra vires* and *ultra vires*, in relation to the possibility of a member State incurring international responsibility for an internationally wrongful act of an organization. The definition of "rules of the organization" contained in article 2, paragraph 1(j), of the 1986 Vienna Convention on the Law of Treaties was appropriate.

54. Regarding the extent to which the conduct of peacekeeping forces was attributable to the contributing State and to the United Nations, respectively, an answer could be found in the status of forces agreements, status of mission agreements or host-country agreements. Guidance could also be sought from the United Nations Secretariat.

55. With regard to chapter XI of the report, his delegation fully endorsed the view that the new regulations on page limits for reports of United Nations subsidiary bodies, should not apply to the reports of the Commission.

56. Concerning the topic "Diplomatic protection", his delegation welcomed the approach taken by the Commission to follow, in article 17, the Judgment of the International Court of Justice in the *Barcelona Traction* case regarding the right to diplomatic protection in respect of an injury to a corporation.

57. His delegation considered that functional protection was a form of protection governed by a special regime. It was an obligation of international organizations, based on the contractual link with their officials; to provide the latter with functional protection, whereas the exercise of diplomatic protection was a discretionary right of the State, based on the principle of citizenship. Since the Commission had agreed to exclude protection of diplomatic and consular officials from the scope of the topic, the same logic would apply to officials of international organizations.

58. The diplomatic protection of a ship's crew was regulated by a *lex speciali*, with a legal regime that differed from that of diplomatic protection. Nevertheless, it did not exclude diplomatic protection being exercised by the State of nationality of a crew member or passenger. Consequently, it was not necessary to expand the scope of the draft articles to encompass such cases.

59. On the topic "International liability for injurious consequences arising out of acts not prohibited by international law", the variety of approaches in existing treaties made the Special Rapporteur's task particularly complex. However, the Commission could make a valuable contribution in the area of allocation of loss. In addition to the preventive measures that an operator should be required to take, the procedural and substantive requirements that the State should place on an operator related to insurance and notification; the State should also make insurance mandatory. The basis for allocation of loss to the operator could be the application of the polluter-pays principle, limited to costs actually incurred for prevention, or response and restoration measures, and to his capacity to pay. State liability should be a last resort, and a system of collective solidarity of the States concerned could also be considered. Lastly, with regard to the final form of the instrument, his delegation favoured a "soft law" approach.

60. As to the topic "Unilateral acts of States", his delegation hoped that the difficulties encountered thus far in elaborating the general principles to be followed by States would be overcome once the study on State practice had been completed. The study would enable

the Special Rapporteur to ascertain, on a case-by-case basis, whether and how the rule according to which unilateral acts produced legal effects has applied. It would also be useful for assessing exceptions and conditions in the implementation of the *acta sunt servanda* principle. It was important to identify a set of principles applicable to unilateral acts, because they represented a source of legal norms. Hence, the focus of the analysis should be how the *acta sunt servanda* principle applied.

61. Therefore, extending the scope of the study to include State conduct that might produce legal effects similar to those of unilateral acts might entail new difficulties, because it would involve institutions of international law and topics that should be approached separately, such as humanitarian interventions and countermeasures. However, among the types of State conduct not considered unilateral acts *strictu senso*, measures taken outside the jurisdiction of the State might be of interest and would not expand the scope of the analysis.

62. Turning to the topic "Reservations to treaties", he said that his delegation welcomed the adoption of draft guidelines 2.5.1 to 2.5.11. He agreed with the Special Rapporteur that enlargement of the scope of a reservation should be treated as the late formulation thereof and that the restrictions adopted in guidelines 2.3.1 to 2.3.3 must therefore be transposed to cases of assessment of the scope of reservations.

63. With respect to the definition of objections, he favoured a formulation based on two elements: intention, which was the key element of an objection, and a reference to the effects that the objection produced, without detailing them. The new wording of draft guideline 2.6.1 was an improvement; the definition of objections should not include all types of unilateral responses to treaties, but only those made in order to prevent the reservation from producing some or all of its effects.

64. In principle, States should be encouraged to state the grounds for their objections, especially in the case of reservations subordinating the application of provisions of a multilateral treaty to domestic law, in the hope that other States would formulate similar objections which might encourage the reserving State to withdraw its reservation.

65. **Mr. Jacovides** (Cyprus) said that the purpose of the current debate was to allow delegations to provide focused comments on the report of the Commission, guidance on issues of legal policy and political direction, as appropriate; generally speaking, the Commission should handle matters of detail or drafting. Governments' positions expressed during the debate should be given no less weight than written replies to the Committee's questionnaires since small States were limited in their ability to produce documents on a wide variety of topics.

66. Turning to the topic "Responsibility of international organizations", he associated himself with the statement made by the representative of Italy on behalf of the European Union while noting the comments made by the delegations of the United Kingdom and Israel concerning the rules of responsibility for peacekeeping operations.

67. With respect to diplomatic protection, he noted with interest the discussion of the growing role played by the international tribunals provided for in bilateral investment agreements and by the International Centre for Settlement of Investment Disputes of the World Bank; the special regime on foreign investment conferred rights directly on foreign investors, whereas customary international law envisaged protection only at the discretion of the State of nationality. He also noted the references to the role of estoppel in that context and to the rules regulating the exhaustion of local remedies (the *Interhandel* case). In reply to the question raised in paragraph 29 of the report, he believed that the topic was adequately dealt with in the draft articles approved in principle by the Commission or envisaged by the Special Rapporteur; no new issues should be included.

68. The topic "International liability for injurious consequences arising out of acts not prohibited by international law (International liability in case of loss from transboundary harm arising out of hazardous activities)" required further work. It was clear from the *Corfu Channel* case that States were responsible for controlling sources of harm in their territory; however, strict liability was not well accepted or understood as a desirable policy in the context of transboundary harm and should be approached with caution. His delegation was flexible as to the final form of the work on the topic, provided that any resulting convention included inter-State dispute settlement clauses.

69. He shared the view that unilateral acts of States were a well-established institution in international law

which, subject to certain conditions of validity, could constitute a source of obligations. He agreed with the Working Group that such acts were statements expressing the will or consent by which a State purported to create obligations or other legal effects under international law; the Commission should continue to consider unilateral acts *strictu senso* and Governments should provide information on their practice in that area. It was important not to over-extend the scope of the topic, which had proved difficult enough within its current definition.

70. He welcomed the exchange of views between the Commission and the human rights treaty monitoring bodies on the issue of reservations to treaties and looked forward to the completion of the project during the present quinquennium through the adoption of a guide to practice, building on the relevant articles of the Vienna Conventions. In particular, draft guideline 2.6.1 filled a gap in those Conventions, although some delegations had criticized the proposed definition as too narrow.

71. He welcomed the prudent and methodical approach taken in the first report of the Special Rapporteur on shared natural resources (A/CN.4/533 and Add.1). Further study of the technical and legal aspects of confined transboundary groundwaters was needed since the science of hydrogeology was a recent one; its relationship to other topics (such as the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses and General Assembly resolution 1803 (XVII) on permanent sovereignty over natural resources), and even the notion of transboundary harm, should also be taken into account. He trusted that the Special Rapporteur would proceed wisely in formulating principles and cooperation regimes, including a dispute settlement mechanism.

72. The topic "Fragmentation of international law: difficulties arising from the diversification and expansion of international law" was of particular interest to his delegation. The increase in fragmentation was a natural consequence of the expansion of international law and was a sign of vitality rather than the reverse, as some feared. He endorsed the approach taken by the Study Group on the topic; at the current stage of its work, the Commission should not deal with institutional proliferation or act as referee in the relationships between institutions. In addition to the examples of the substantive aspects of fragmentation mentioned in paragraph 419 of the report of the Commission, he drew attention to the 1998 *Loizidou v. Turkey* case, which dealt with the question of territorial reservations in declarations of compulsory jurisdiction. The Committee should continue to support the preference for a study of the rules and mechanisms dealing with conflicts, for which the 1969 Vienna Convention on the Law of Treaties provided an appropriate framework.

73. There was much scope for productive work on the topic "Hierarchy in international law: *jus cogens, obligations erga omnes* and Article 103 of the Charter of the United Nations as conflict rules". The concept of peremptory norms of international law (*jus cogens*) from which States could not derogate by agreement, as distinct from rules which the parties might freely regulate by such agreement (*jus dispositivum*), as incorporated in the 1969 Vienna Convention, needed authoritative elaboration. Pages 16 to 26 and 105 to 119 of document A/CN.4/454, containing outlines prepared by members of the Commission on selected topics of international law in 1993, provided much relevant material for such a study, which would satisfy a pressing need to clarify and amplify the topic. The situation as it stood was not conducive to the objectivity, transparency and predictability which should characterize a legal principle, especially one which had been solemnly accepted in the Vienna Convention and elsewhere and had been given much weight by the Commission in its recently adopted articles on State responsibility and in the context of the topic of the responsibility to protect.

74. He looked forward to the outcome of the efforts of the Working Group with regard to the long-term programme of work of the Commission, particularly in the light of the progressive views on *jus cogens* held by its Chairman, Mr. Pellet. The two additional chapters (II and III) added to the Commission's report had promoted a focused debate, and he endorsed the Commission's position on the issues of documentation and honoraria. The annual International Law Seminar had proved its value over the years; he also welcomed the Commission's exchange of information with the bodies mentioned in paragraphs 449 to 455 of the report. The exchanges currently taking place in New York between the President and members of the International Court of Justice, the legal advisers of foreign ministries and the Committee served the same purpose in a different setting and were a means of promoting their common objective of enhancing the

role of international law and its codification and progressive development in the modern world.

*The meeting was suspended at 5.10 p.m. and resumed at 5.20 p.m.*

75. **Mr. Troncoso** (Chile) said that the ease with which unilateral acts of States were formulated and their function as a source of international obligations made them an important aspect of legal relations between States. While information on State practice would be useful, many Governments had found it impossible to reply to the Commission's questionnaire because they had no systematic procedures in that area.

76. He endorsed the Special Rapporteur's distinction between the institution of recognition and the unilateral act of recognition; the method used by the Special Rapporteur could be utilized to define the content of each unilateral act and could be applied to acts such as waiver, promise and protest, with a view to the establishment of specific rules for each of them. However, a general study of all unilateral acts *strictu senso* would suffice since, except in rare cases, any principles established would also apply to waiver, promise and protest. The grounds for declaring the invalidity of an act of recognition should also be applicable to all those categories of unilateral acts.

77. The Commission had asked Governments to comment on conduct of States which might, in certain circumstances, produce legal effects under international law similar to those of unilateral acts *strictu senso*. In his view, such conduct might include declarations of a State's accession to a treaty which had previously been concluded by other States and a State's recognition of the compulsory jurisdiction of an international tribunal; while both those cases constituted unilateral acts with legal consequences for the author State, they were subject to a specific consensual, conventional regime — treaty law — and did not therefore qualify as unilateral acts *strictu senso*. Lastly, he proposed that in addition to considering other categories of unilateral acts in order to establish their specific content, the Special Rapporteur should prepare new draft articles on the general characteristics common to all unilateral acts *strictu senso*.

78. Turning to the topic "Reservations to treaties", he said that the difference between enlargement of the scope of a reservation and the late formulation of a reservation was not great. Both should be viewed as exceptional cases and should therefore be subject to significant limitations, bearing in mind, however, that there were not sufficient legal grounds for prohibiting them. Since either practice could affect the stability and security of treaty regimes, the 1969 and 1986 Vienna Conventions were very specific as to the moment when they could be formulated; those rules should remain basically unchanged.

79. However, there were situations in which a State or international organization felt compelled to reformulate a previous reservation; if it could not do so because the time period for reformulation had passed, it might be forced to denounce or withdraw from the treaty. For example, a State might need to enlarge the scope of a reservation because amendments to its Constitution were incompatible with a provision of a convention to which it was a party. In such a situation, there could be no question of "bad faith" on the part of the formulating State. Acceptance of the procedure would encourage as many States as possible to become parties to treaties, prevent States from denouncing treaties to which they had already acceded, and avoid situations in which the author of a reservation denounced a treaty, then re-ratified it with an "enlarged reservation", a practice which, while not fully acceptable, was impossible to prevent. Moreover, if States could modify a treaty by mutual agreement, it followed that they could also agree to the formulation of enlarged reservations. Given the choice between prohibiting or restricting that practice, Chile would prefer the second alternative.

80. It was obvious that enlarged reservations should be subject not only to the specific rules laid down in the treaty itself, but also to the criterion of unanimous acceptance. Such a requirement was a more than adequate guarantee that the modality would not be used in bad faith or in an abusive manner. It was clear, furthermore, that the formulation of enlarged reservations should be subject to the rules set out in the 1969 and 1986 Vienna Conventions concerning acceptance of and objections to ordinary reservations. An enlarged reservation might be prohibited or incompatible with the object and purpose of a treaty. The fact that reservations of that kind were not permitted in a given regional framework did not justify their wholesale rejection.

81. With regard to withdrawal and modification of interpretative declarations, a simple interpretative declaration, unlike an ordinary reservation, could be

formulated at any time. By the same token, it could be withdrawn at any time without further formalities. If that was true of reservations, it appeared to be acceptable in the case of interpretative declarations, in view of their nature and effects.

82. His delegation shared the view that conditional interpretative declarations should be subject to the same rules as reservations as to when they could be formulated, namely, when States or international organizations expressed their consent to be bound by a treaty.

83. The modification of simple interpretative declarations should be possible at any time. There was no need to speak of enlarged modification of interpretative declarations in view of the nature of such declarations, in other words, the fact that they did not purport to modify or exclude the legal effects of any provisions of a treaty, but rather were compatible with the scope and meaning of the agreed rules. Accordingly, his delegation did not agree to the inclusion, in the case of interpretative declarations, of the criterion of "enlargement", which was, however, necessary in the case of reservations. In that regard, there was a clear difference between interpretative declarations and reservations, which explained the different treatment afforded them.

84. The need to state clearly the grounds for objections to reservations, a notion which had seemed to elicit support from some members of the Commission and on which a guideline was to be drawn up by the Special Rapporteur, deserved consideration. Such a practice could, however, lead to awkward discussions of the quality of the arguments on which the objection was based. It would be neither fitting nor proper for the State formulating the reservation to be able to dismiss the grounds for an objection thereto. The approach, therefore, should be to recommend that the grounds for the objection should be stated clearly, but should not be subject to evaluation by the State formulating the reservation.

85. **Mr. Curia** (Argentina) said that diplomatic protection was a convenient remedy available to States for the protection of their nationals abroad. His delegation agreed with other delegations that it was important not to depart from the rules laid down by the International Court of Justice in the *Barcelona Traction* case. In that case, the Court had expressly recognized the right of the State of nationality of the shareholders to exercise diplomatic protection only if their rights would have been directly injured or the company would have ceased to exist in its place of incorporation. As the Court had stated in paragraph 36 of the judgment, the rules of diplomatic protection applied in a residual manner in the absence of an agreement between the parties. Based on the distinction made by the Court between rights and interests, the mere fact that both the company and the shareholders had sustained injury did not mean that both had the right to require or seek reparation.

86. His delegation shared the view that the aim should be to codify secondary rules in the area of diplomatic protection. That institution was nothing other than a special instance of the law of international responsibility of States. It should be stressed that what was involved was a discretionary right of the State concerned.

87. Turning to chapter VI of the report, he said that clearly, to the extent that a State was bound by the obligations of prevention provided for in the draft articles, the failure to perform such obligations would entail the international liability of that State. In such a case, the general rules governing liability for internationally wrongful acts would apply. It was no less important, however, to clarify other aspects of liability. If significant transboundary harm occurred despite compliance with all of a State's obligations of prevention, it would be necessary to determine the liability of the State of origin for harm caused in the territory or other areas under the jurisdiction of other States.

88. It was also desirable to continue to develop general rules governing the liability of the operators of hazardous activities in the State of origin if such activities actually resulted in significant transboundary harm to persons, property and the environment in other States. In that connection, due consideration should be given to the "polluter pays" principle.

89. With regard to the topic "Reservations to treaties" and in particular the question of the late formulation of reservations, dealt with in draft guidelines 2.3.1 to 2.3.3, his delegation was of the view that it was appropriate to limit late formulation. The wording of the limitation reflected current practice, particularly that of the Secretary-General. The same applied to enlargement of the scope of reservations, referred to in guideline 2.3.5. As the arbitral tribunal had stated in

the *Mer d'Iroise* case, every response to a reservation was not necessarily an objection. Intent was a crucial element of objection.

90. Turning to chapter IX of the report, he said that, in the light of the information provided in the report, stricter standards of use and prevention of contamination than those applied to surface waters would probably be required. It had also been suggested that it would be more appropriate to adopt stricter standards than those applied in the framework of the topic of international liability and the concept of significant harm. His delegation underscored the doubts which it continued to have concerning the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses and whether customary law in the matter had been properly codified: concepts such as "confined groundwaters" and "groundwaters unrelated to surface waters" were far from enjoying undisputed recognition.

91. With regard to the information requested of States, it should be noted that Argentina, along with Brazil, Paraguay and Uruguay, had one of the most extensive underground aquifers on the planet, the Guaraní aquifer system. Those groundwaters had given rise to the formulation and implementation of a regional project on environmental protection and sustainable and integrated management of that system. The project had created national groups with management committees and it had a secretariat in the city of Montevideo. Argentina had also recently approved a law establishing an environmental water management system which included groundwaters.

92. **Mr. Winkler** (Austria), referring to chapter VIII of the report, expressed concern about the increasing number and complexity of the draft guidelines. The 1969 Vienna Convention on the Law of Treaties contained 80 articles without the final clauses. Currently, the draft guidelines on reservations contained 66 individual guidelines. If the Commission continued at the current pace, the number of guidelines on that one issue would exceed the number of articles in the Convention. His delegation therefore strongly encouraged the Commission to streamline the current guidelines, merging them wherever possible.

93. While draft guideline 2.5.3, which required States to undertake a periodic review of the usefulness of reservations, would doubtless be beneficial to the integrity of the treaty, it went beyond the 1969 Convention and imposed a new commitment on States. Clearly, there were two different categories of guidelines, namely, interpretative guidelines to clarify provisions of the Vienna Convention and new commitments in the form of recommendations. It would be useful to make it clear to which category each guideline belonged.

94. With regard to draft guideline 2.5.8, further clarification of the phrase "or it is otherwise agreed" would be welcome. The most appropriate interpretation was that agreement must be reached between all contracting parties, unless it was accepted that the withdrawal could take effect at different times in relation to different parties.

95. With regard to draft guideline 2.5.9 (b), attention should be paid to the fact that, particularly in the field of human rights treaties, the withdrawal of a reservation with retroactive effects could also entail effect under criminal law. If a reservation to a provision prohibiting inhumane treatment were withdrawn, the withdrawal of the reservation could make such treatment a crime punishable under the law of a given State. It was doubtful that paragraph (b) addressed such situations, as it proceeded only from the classical view of international law as regulating reciprocal relations among States. The question arose, therefore, whether the withdrawal of a reservation of the kind referred to could be regarded as adding to the rights of the withdrawing State.

96. In draft guideline 2.5.10, the wording "achieves a more complete application of the provisions of the treaty" appeared to be redundant, particularly in view of draft guideline 2.5.11, which elaborated on the effect of such partial withdrawal.

97. Lastly, with regard to the question posed by the Commission relating to draft guideline 2.3.5, his delegation was not in favour of the right to enlarge the scope of existing reservations, as proposed in that guideline. As in the case of late reservations, his delegation opposed modification per se.

98. Turning to chapter VII of the report, he said that, while the topic of recognition had been discussed previously as an item for possible inclusion in the Commission's work plan, it had never been accepted, because it entailed too many political aspects. Hence, the approach adopted by the Special Rapporteur raised considerable questions. It seemed doubtful whether the Commission should deal with the question of

recognition in the context of the topic "unilateral acts of States" without seeking the prior consent of the General Assembly.

99. As to the recommendations made by the Working Group in paragraphs 306 and 307 of the report, his delegation believed that, it would be useful to concentrate on unilateral acts, as referred to in recommendation 1. Subsequently, a decision should be taken on the need to broaden the scope of the topic, as referred to in recommendations 2 and 5. His delegation urged the Commission to devote adequate attention to analysing relevant State practice and expected that the report envisaged in recommendation 4 would be the basis for future work on the topic. Recommendation 6 should include the question of interpretation, as it could not be excluded that the rules of interpretation applicable to unilateral acts would differ from those applicable to international treaties. Lastly, his delegation concurred with the intention of the Special Rapporteur not to submit legal rules in his next report (recommendation 7).

100. **Mr. Henczel** (Poland), referring to chapter VII of the report, said that work on the topic had progressed slowly thus far, as doubts had been expressed about its suitability for codification. Questions had also been raised as to whether it should cover only unilateral acts *strictu senso* or also encompass certain types of State conduct capable of producing legal effects.

101. Because the lack of information on State practice had been one of the main obstacles to progress in the study of the topic, the Commission had once again requested Governments to provide information on general practice relating to unilateral acts. Replies by Governments to that request, together with the recommendations of the Working Group on the scope of the topic and method of work, would be helpful to the Special Rapporteur and the Commission in deciding how to proceed.

102. The line between unilateral acts intended to formulate legal obligations of States and those adopted exclusively for political purposes was not always clear. States sometimes wished to retain that ambiguity so as to avoid being legally bound by their unilateral declarations.

103. With regard to chapter VIII of the report, his delegation reiterated its belief that the Guide to Practice would be of great practical value to Governments and international organizations, and its hope that the draft would be completed during the current quinquennium.

104. At the same time, his delegation expressed concern that consecutive draft guidelines proposed by the Special Rapporteur were becoming more and more numerous and detailed. His Government would submit in writing its views on the specific issues referred to in chapter III of the report.

*The meeting rose at 6 p.m.*