United Nations A/C.6/60/SR.15

General Assembly
Sixtieth session

Official Records

Distr.: General
18 November 2005

Original: English

Sixth Committee

Summary record of the 15th meeting
Held at Headquarters, New York, on Friday, 28 October 2005, at 10 a.m.

Chairman: Mr. Samy (Vice-Chairman) . . . . . (Egypt)
later: Mr. Yañez-Barnuevo (Chairman) . . . . . (Spain)

Contents

Agenda item 80: Report of the International Law Commission on the work of its fifty-seventh session (*continued*)

Statement by the President of the International Court of Justice

05-57640 (E)

0557640

In the absence of Mr. Yañez-Barnuevo (Spain), Mr. Samy (Egypt), Vice-Chairman, took the Chair.

The meeting was called to order at 10.10 a.m.

Agenda item 80: Report of the International Law Commission on the work of its fifty-seventh session (*continued*) (A/60/10)

1. **Ms. Wilson** (United States of America) said that, given the complexity of the topic "Shared natural resources" and widely varying State practice in the matter, context-specific arrangements were probably the best way to address pressures on transboundary groundwaters. Rather than producing a convention, it would be more useful if the Commission were to draw up a list of guidelines to help States negotiate more meaningful bilateral or regional arrangements. Plainly, the Commission's work on that topic did not amount to a codification exercise, because the content of the proposed draft articles went well beyond the established law. Declaratory articles, for example, would be inappropriate. Her Government supported the Commission's work on the daunting subject of aquifers, but urged it to avoid more controversial issues, such as oil and gas, which could detract from the overall exercise.

2. The topic "Unilateral acts of States" posed particular challenges. The protracted disagreement among members of the Commission on a number of fundamental issues might even call in question the worth of pursuing the study. Other States should carefully consider whether there was any likelihood of successfully concluding the project in the near future. The importance of the part played by the addressees of unilateral statements and the significance of the reactions of third parties underscored the fact that the specific context in which a unilateral act took place, as opposed to the act itself, played such a central role that the topic might well prove to be unamenable to codification or progressive development. Similarly, intent, in other words whether a State manifestly intended to enter into a legal commitment, was another crucial aspect where codification and progressive development were neither appropriate nor feasible.

3. With regard to the topic "Reservations to treaties", the Commission had requested comments on the effect an objection to a reservation to a treaty would have if that objection was made on the grounds that the reservation was incompatible with the object and purpose of the treaty and if the objecting State did not oppose the entry into force of the treaty between itself and the reserving State. Her Government disagreed with the position adopted by some others that, if a State had made a reservation which was incompatible with the object and purpose of a treaty, it might be bound by the treaty without the benefit of the reservation, should another party properly object to the reservation on that basis. While reservations which were incompatible with the object and purpose of the treaty were impermissible under article 19 (c) of the Vienna Convention on the Law of Treaties, an objecting State must determine whether it was desirable to remain in a treaty relationship with a reserving State, despite the existence of what it considered to be an impermissible reservation. If, however, an objecting State rejected a treaty relationship with a reserving State on the basis of an objectionable reservation, the reserving State could always withdraw its reservation. To suggest that a State could be bound by a treaty without the benefit of a reservation it had made would directly conflict with the basic principle of consent.

4. *Mr. Yañez-Barnuevo (Spain) took the Chair.*

5. **Mr. Hernández García** (Mexico) said that the importance of reservations for the legal consequences of treaties made it crucial to clarify the situation by means of a wide-ranging study of the existing law and the interpretation and practice of States and other subjects of international law. The Special Rapporteur had correctly stated that, under article 19 of the Vienna Convention on the Law of Treaties, the formulation of reservations was permitted unless reservations were prohibited by a given treaty or were incompatible with its object and purpose. The freedom to formulate a reservation was therefore not unlimited. A number of questions relating to exceptions under article 19 (c) had been effectively addressed in draft guidelines 3.1 to 3.1.13, but a more pressing question concerned the application of the criterion of conformity with the object and purpose of a treaty. That criterion was not subsidiary to the exceptions contained in article 19 (a) and (b). His delegation therefore concurred with the Special Rapporteur's view that any reservation expressly or tacitly authorized by the treaty must be compatible with its object and purpose. It was, however, seldom easy or straightforward to determine such object and purpose. The Special Rapporteur's broad definition of the concept was commendable,

since it enabled the criterion to be applied on a case-by-case basis.

6. He also commended the elaboration of draft guidelines 3.1.7 to 3.1.13 to address specific cases of certain kinds of reservation. Of particular interest were the question of who could rule on the invalidity of reservations and the legal consequences of invalidity, on which the Vienna Convention was silent. His delegation endorsed the list of those competent to assess the validity of reservations contained in draft guideline 3.2. The fact that States could determine the invalidity of a reservation reflected the consensual nature of legal norms, but since such a procedure could lead to disagreement between the parties to a treaty, it was essential that treaties should include clear dispute settlement provisions and, where appropriate, establish a monitoring or depositary body to determine the validity of the reservation.

7. Draft guidelines 3.3.2 and 3.3.3 were entirely satisfactory. The former was of particular importance, since it resolved many of the problems that could arise as a result of silence by States regarding reservations that had been made. It meant that, where a reservation was invalid under article 19 (c) of the Vienna Convention, it was automatically null and void even if there had been no objections by other States. Together with draft guideline 3.3.3, it demonstrated that the validity or invalidity of a reservation was directly related to the objective elements of treaty law and was not a subjective decision on the part of States. His delegation therefore disagreed with the thrust of guideline 3.3.4, "Effect of collective acceptance of an invalid reservation", on the grounds that, once it had been established that an invalid reservation was null and void, there should be no exceptions. No further action by States should be necessary; the very expression "invalid reservation" implied the nullity of the reservation. Otherwise the spirit of the treaty in question, and the very integrity of the legal regime of treaty law, would be called into question.

8. Obviously, the functioning of treaty law and the implementation of treaties did not depend exclusively upon regulatory articles. The basic element was the goodwill of the parties, which in turn depended on an appropriate text. States should, above all, give greater consideration to reservation clauses and should recognize the importance of establishing monitoring bodies to determine the validity of treaties or effective dispute settlement mechanisms. They should also take more account of reservations made by the other States parties. Only if States showed a greater degree of compromise could the quality and functioning of treaty law be improved.

9. **Ms. Oh** Jin-hee (Republic of Korea), referring to the topic "Shared natural resources", said that the issue of transboundary groundwaters affected a limited number of States. The Commission should therefore accelerate its work on that aspect of the topic so that it could move on to other aspects, including oil and gas, that might be more complex to handle but were also relevant to a greater number of States. She believed that that view reflected the wishes of many non-aquifer States. Meanwhile, the Commission should focus on any legal rules on the use of groundwaters that differed from those featured in the Convention on the Law of the Non-Navigational Uses of International Watercourses — if there were any such — so that there was no duplication. Similarly, if an instrument on groundwaters was created, it seemed likely that, unless non-aquifer States enjoyed certain rights only a small number of directly affected States would be induced to become parties to the instrument, which therefore might not enter into force. It might be preferable to draw up a model regional convention that would be acceptable to all States in a given region. The Commission should, however, give due weight to the opinions of States that were directly affected with regard to the final legal form of the instrument.

10. With regard to the topic "Unilateral acts of States", it was widely accepted that such acts created obligations for the State concerned and rights for the addressees, which might change their positions in reliance on the unilateral act. As for third States, unilateral acts might, even if not giving rise directly to legal rights and duties, be of legal significance for them in other ways, for example as evidence of conduct or as a renunciation of rights. A basic principle governing the creation and performance of legal obligations was that of good faith. An international obligation that was assumed unilaterally was binding. Interested States could place confidence in a unilateral act and were entitled to require that the obligation thus created was respected by the State that had undertaken it. In order to protect the rights of addressees and preserve international legal stability, therefore, it should not be permissible for States to revoke or modify unilateral acts without the consent of the other States concerned. The principle of *rebus sic stantibus*

could also be considered as grounds for the revocability and modification of unilateral acts. The Vienna Convention on the Law of Treaties might provide a framework, mutatis mutandis, for the formulation of such a concept. It was almost a decade since the Commission had embarked on the issue of unilateral acts of States. It should now focus on determining the final form of its deliberation.

11. With regard to the topic "Reservations to treaties", her delegation's response to the question posed in paragraph 29 of the report was that there was often a need to retain a reserving State as a party to a treaty, even if its reservation was incompatible with the object and purpose of that treaty. That applied particularly to human rights treaties. The legal effect of reservations and objections was still uncertain, as noted by the Human Rights Committee in its General Comment 24. The Commission should therefore differentiate carefully between the current state of the law and what the law should be.

12. **Mr. Duarte** (Brazil), commending the third report of the Special Rapporteur on shared natural resources (A/CN.4/551 and Add.1 and Corr.1) and the work of the Working Group on Transboundary Groundwaters, said that Argentina, Brazil, Paraguay and Uruguay had under their territories one of the largest aquifers in the world, the Guarani aquifer, most of which was under Brazilian territory. The four countries had established a high-level group within the Common Market of the South to set up a legal framework to govern their rights and duties with respect to the aquifer. They had been able to reach understandings on most of the issues involved.

13. A step-by-step approach should be taken to the question of shared natural resources. States had the primary responsibility for the management of groundwater resources. However, that responsibility was not incompatible with States' commitments at the international level. Regional agreements, for example, played a fundamental role in reconciling national interests and international concerns in relation to the management of transboundary resources. As well as regulating access to those resources, regional commitments reaffirmed fundamental principles such as the obligation not to cause harm and the strengthening of cooperation practices.

14. Water resources belonged to the States in which they were situated and were subject to the exclusive sovereignty of those States. In that context, there should be an explicit reference in the draft articles to the principle of sovereignty regarding the use of transboundary resources set out in General Assembly resolution 1803 (XVII).

15. **Mr. Guan** Jian (China) said that his delegation basically endorsed the general principles governing transboundary groundwaters as set out in the draft articles. However, the latter should contain an explicit reference to the sovereign rights of aquifer States in accordance with the principle of permanent sovereignty of States over their natural resources enunciated in General Assembly resolution 1803 (XVII), which was the basis of the arrangements entered into by the relevant countries on the development and conservation of transboundary aquifers. Since the draft articles were no longer restricted to transboundary confined groundwaters, there was a danger that the draft articles might overlap with the Convention on the Law of the Non-Navigational Uses of International Watercourses. Their scope of application should therefore be limited to confined aquifer systems, or systems with negligible communication with surface water, which did not fall under the aforementioned Convention. Alternatively, the draft articles could be given special status as enjoying priority over other international agreements.

16. With regard to the exact meaning of the term "equitable and reasonable" utilization, and the question whether a distinction should be made, in the legal rules on utilization, between recharging and non-recharging aquifers, the Special Rapporteur should continue to study the practice of relevant countries and make further proposals based on ample scientific evidence. With regard to the obligation not to cause harm, his delegation supported the use of the phrase "significant harm". What constituted "significant" harm needed to be determined in the light of specific conditions, but the term already appeared in the Commission's work on international liability for injurious consequences arising out of acts not prohibited by international law. The Special Rapporteur was correct in not addressing the question of compensation in the draft articles.

17. His delegation supported the Special Rapporteur's view that the fact that the draft articles were currently in the form of a framework convention did not prejudge their final form, which could be settled after progress had been made on substantive questions. The form that they took would depend on

the extent to which they were legally binding. Given the complexity of the issue and the lack of information on State practice, the Commission should proceed with caution in deciding on the final form of the draft articles, so as to avoid imposing unreasonable constraints on the sovereign right of States and to enable questions relating to transboundary aquifers to be solved by consultation.

18. With regard to the topic "Unilateral acts of States", he said that, although the feasibility of codifying such acts remained doubtful, a considerable number of unilateral acts were based on a State's intention to produce legal effects. The existence of such acts, attested to by international practice and judicial decisions, was having a major impact on international relations. To determine the conditions under which such acts could produce legal effects would help to maintain the stability and predictability of international relations. As for the form that its work should take, the Commission should, even if it could not produce draft articles, take stock of its studies and identify some basic principles.

19. With regard to the topic of "Reservations to treaties", the core of the question was the conditions under which the formulation of reservations by States was permitted or prohibited. To treat the prohibition of reservations as an exception to the permission of reservations could encourage more countries to ratify international treaties, expand the scope of application of such treaties and maintain their integrity and effectiveness. As for how to judge whether a reservation was contrary to the object and purpose of the treaty, there was a dearth of uniform and objective standards in State practice. The Special Rapporteur's suggested terms — the "essential provisions" and the "raison d'être" of the treaty — might provide a temporary solution but could hardly eliminate subjectivity in making judgements. As for the relationship between reservations, on the one hand, and customary, peremptory and non-derogable norms, on the other, the latter were extremely complex concepts and their relationship with reservations needed further exploration. It would not be logical to single out for special attention reservations to human rights treaties, treaties on dispute settlement or agreements on the implementation of treaty monitoring mechanisms, since there were no special standards specifically governing such treaties.

Statement by the President of the International Court of Justice

20. **The Chairman** welcomed the President of the International Court of Justice and recalled the emphasis placed on the Court's work in the 2005 World Summit Outcome.

21. **Mr. Shi** Jiuyong (President of the International Court of Justice) said that, in 2004, the International Court of Justice, the principal judicial organ of the United Nations, had issued a final judgment in ten cases, the judgments in all of the eight cases concerning the *Legality of Use of Force* having been rendered simultaneously. The Court had held oral hearings in three cases. Since finalization of the Court's annual report to the General Assembly a new case had been filed, a sure sign of the Court's vitality and States' continuing trust in it. The total number of cases on its docket therefore stood at 12, a perfectly reasonable figure for an international court.

22. The Court's annual report contained many figures which did not shed much light on the true nature of the Court's work. Speculation about its work had often been far removed from reality. Admittedly, the Court had been careful to maintain a veil of discretion, not through a fear of transparency but because, like every judicial institution, it had a duty to maintain its independence and the confidentiality of its deliberations. Since the parties appearing before the Court were sovereign States and the legal questions submitted to it often arose in the midst of complex political situations, it was all the more important to maintain that independence and confidentiality. At a time when the Court was popular and its role in peacefully settling international disputes was acclaimed, it was vital to ensure that the exact nature of its work was fully understood by all.

23. The first thing to bear in mind was that the Court was a very small institution in terms of size and budget. Although it was one of the five principal organs of the United Nations, its budget for the 2004-2005 biennium had represented barely 1 per cent of the Organization's total budget for that period. In comparison, the budget of the International Criminal Tribunal for the former Yugoslavia had been nearly ten times larger than that of the Court. The latter had made very modest budgetary requests for the 2006-2007 biennium and it was therefore important to bear in

mind the constraints on its resources when evaluating its work.

24. The Court was the only principal organ of the United Nations to have its own independent administration. The Registry, the permanent administrative organ of the Court, had a unique status within the United Nations, since it was placed under the authority of the Registrar and the Court, rather than under that of the Secretary-General. The size of the Registry was in proportion to its budget. Its 98 staff members were spread among the various departments and technical divisions of the Registry. As far as the legal activities of the Court were concerned, it should be noted that the Legal Department was staffed by only 12 lawyers, five of whom formed a pool of clerks for the judges. That meant that the judges of the Court, unlike those of other international courts and tribunals and even of higher national courts, did not have the support of any personal law clerks. In fact, the only permanent institutional backup the judges received was that of their secretaries.

25. Despite its limited size and resources, the Court had established procedures and methods enabling it to accomplish its work efficiently and in a timely manner. Those methods were set out in the Resolution concerning the Internal Judicial Practice of the Court, which had been adopted pursuant to article 19 of the Rules of Court. Three stages could be defined in the progression of a case before the Court. First came the written stage, during which the parties to the case filed their pleadings with the Court. It was followed by the oral stage, during which the parties argued their case before the Court. The final stage was that of deliberation, during which the Court reached a decision on the case and wrote its judgment.

26. Focusing on the deliberation stage, he said that the criticism levelled against the Court on account of the length of its proceedings was unjustified. An examination of the entire lifetime of a case, from the day it was filed until the day the Court rendered its final decision, revealed that the written stage of the procedure was by far the longest. In other words, most of the time spent on deciding a case depended not on the work of the Court, but on that of the parties to the case. Delays in proceedings were often the result of procedural steps taken by the parties. When States resorted to litigation against each other, they did not wish to be constrained by procedures restricting their ability to present their case as fully as they wished. As a matter of principle, sovereign States which brought disputes before the Court could not be prevented from using all the procedural options at their disposal. Hence it was difficult for the Court to refuse to extend the time limits for filing certain pleadings or documents if all the parties to the case were in agreement.

27. Once the written pleadings had been filed, it was not uncommon for parties to jointly request the Court to "sit on" the case while they engaged in negotiations in an attempt to settle the case out of court. While the Court's function was to decide disputes through the application of international law, its principal objective was the peaceful settlement of disputes. It therefore welcomed any endeavours by States to arrive at such a settlement, even if it were reached out of court. If negotiations failed, the Court naturally regained its role of ultimate legal arbitrator. The simple fact that a case was on the Court's docket could act as an incentive to negotiate a settlement to a dispute in accordance with international law. That had happened in the two cases concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (*Libyan Arab Jamahiriya v. the United Kingdom*) and (*Libyan Arab Jamahiriya v. United States of America*), whereupon the Court had issued two orders of 10 September 2003 placing on record the discontinuance with prejudice, by agreement of the parties, of the proceedings and directing that the cases be removed from the Court's list.

28. That did not signify that the Court was complacent about the efficiency of its operations and control over its proceedings. It had promulgated several Practice Directions aimed at accelerating contentious proceedings. It had requested parties to reduce the number and length of their written pleadings and annexed documents. It had fixed standard time limits for the submission of documents in incidental proceedings and had laid down strict rules regarding the filing of new documents after the written proceedings had closed. Those measures had already started to have an effect, but the fact remained that the parties had an important role to play in ensuring timely settlement of their case. When parties sought a swift settlement and cooperated fully with the Court, experience showed that the Court could act quickly. In two cases, *Avena and other Mexican Nationals* (*Mexico v. United States of America*) and *Arrest Warrant of 11 April 2000* (*Democratic Republic of the Congo v.*

Belgium), the final judgments had been delivered within 14 months and 16 months respectively of the application being lodged. In the latter case, the Belgian Government had agreed to present its preliminary objections and its arguments on the merits jointly, thereby allowing the Court to hear the whole case at once without a separate phase devoted to questions of jurisdiction and admissibility.

29. With regard to the deliberations, that part of the proceedings was entirely the responsibility of the Members of the Court. A case was under deliberation from the moment that the oral proceedings ended. If time allowed, the first deliberations of the Court were held directly after the President had declared the sitting of the Court closed. That meeting was relatively formal and its purpose was essentially to allow the President to distribute to the Members of the Court a list of questions which he had established during the earlier proceedings and which outlined the issues which the Court would, in his view, need to discuss and decide. The list was not definitive and was only intended to guide Members of the Court in their personal reflections about the case. Judges were thus free to discuss the list and to suggest amendments or additions to it during the meeting. However, Members of the Court tended to avoid discussing the subject matter of the questions at that stage, preferring first to organize their thoughts.

30. After that initial meeting, the Members of the Court retired to their offices for a period of up to several weeks, during which they wrote their notes, which were a complete exposé of their preliminary views on the case and on the way it should be decided. Notes were written in all cases except in incidental proceedings, in which the Court could dispense with written notes in order to accelerate the deliberation process. One of his predecessors, Judge Bedjaoui, had commented that the functions of a judge at the Court could be summed up in four verbs: to read, to listen, to deliberate and to decide. He himself felt that a fifth verb should be added: to write. The writing of the note was an essential part of the deliberation process, since it allowed each judge to analyse, filter and reorganize the vast amounts of information that he or she had read during the previous two phases of the proceedings. That period also allowed Members of the Court to research certain points of law which they felt to be fundamental. Although judges wrote their notes on their own, they received help from the Legal Department for specified legal research they might require. Once a case became ready for hearing, it was assigned to a team of lawyers from the Legal Department. That team first assisted the plenary and then the drafting committee in preparing research papers, editing texts, and producing, under the supervision of the President, documents intended to facilitate the work of the judges. The fact that judges wrote their notes on their own did not prevent them from having informal discussions with each other about specific issues. In the end, each note was unique in content and style as much as in length.

31. At the end of the period allowed for the writing of notes, the texts were collected by the Registry and sent to the Linguistic Department for translation into the Court's other official language. Article 39 of the Statute of the Court, stipulated that the official languages of the Court were to be French and English. The Court's work was done, at every stage, in both languages and the Court could only move to a new stage of its work once everything produced during the previous stage had been translated. During the drafting of a decision, both the French and English versions were treated as original versions and drafted very carefully. The comparison of the two versions during the drafting stage also lead to a more accurate phrasing of the Court's thinking. The bilingual nature of the Court therefore offered a guarantee of quality which was probably unattained in any other institution. The work of the Registry was in that sense vital, and produced some of the finest translations done in the United Nations. Once the notes had been completed and translated, they were distributed simultaneously by the Registrar to the Members of the Court, who then acquainted themselves with the thinking of their colleagues. Depending on the case, Members of the Court were given one or two weeks for that exercise, before the full deliberations began.

32. The deliberations proper of the Court were a unique experience for the participants. There were 15 judges, or sometimes 17 if the ad hoc judges were included, from every region of the world and representing the main forms of civilization and the principal legal systems of the world, all of whom were distinguished international lawyers, but with very diverse professional experience. For a period lasting from one or two days in the more straightforward cases to several weeks in the most complicated, the Members of the Court presented their views on the case under

deliberation in inverse order of precedence. The presentation sometimes reflected a judge's note, but that judge's views might have changed in the light of notes by other judges. Each exposé was followed by questions, comments, and requests for clarification from other Members. Slowly, presentation after presentation, a majority view began to appear and the future judgment began to take shape. At the end of the presentations, after presenting his own view, the President of the Court summarized the debates, recapitulated the points on which there seemed to be majority agreement and those which required further discussion. The Court then broke, and informal discussions were held outside the deliberation room.

33. The Resolution concerning the Internal Judicial Practice of the Court specified in article 6 (i) that on the basis of the views expressed in the deliberations and the written notes, the Court would proceed to choose a drafting committee by secret ballot and by and absolute majority of votes. Drafting committees were elected, insofar as possible, by consensus. In most cases, the President tried to determine which Members of the Court belonging to the majority would be interested in participating in the drafting committee and whether such a choice would satisfy other Members. During the break following the President's summary of the deliberations, the judges discussed the candidates and, when they returned to the deliberation room to vote, the President generally proposed two names. A secret ballot was then held and judges were free to follow the President's suggestion or to propose other names. Once the two members of the drafting committee had been elected, the President automatically became the third member of the committee unless he belonged to the minority. In such a case, the third post would be occupied by the Vice-President unless he too was in the minority. An election for a third member would then take place. In rare cases, when it was presumed that a decision would be very long, a fourth or even a fifth member could be added by election so as to allow for a better division of the drafting work.

34. The task of the drafting committee, assisted by the Registry, was to turn days of deliberation into a coherent and complete text reflecting the views of the majority. The decision to be written was usually divided among the members of the committee, each of whom was responsible for drafting his or her part. When all the parts were drafted, they were circulated and discussed by the members of the committee and modified accordingly. The parts were then merged and textual coherence was ensured by means of any necessary stylistic amendments. Next, the drafting committee made sure that a complete and accurate version of the text existed in both French and English; it always produced and revised the drafts in both languages and never circulated a draft before it was entirely satisfied with both language versions. In that sense, both versions were considered to be original drafting versions. The first draft completed by the drafting committee was called the "preliminary draft judgment", and was circulated to all Members of the Court, who were given a limited time to read it and propose amendments, which could be either substantive or stylistic. Each amendment was considered by the drafting committee and either accepted or rejected. To gain time, purely stylistic amendments were sometimes dealt with directly by the Legal Department. The amended draft was called the "draft judgment for first reading".

35. The drafting of a judgment was a complicated and very meticulous exercise. In the best case scenario, when all judges agreed on the outcome of the case, it entailed turning the views of 15 or more judges into one coherent decision. In the worst case, it meant expressing the views of the majority while simultaneously trying to accommodate the views of the minority on less contentious points. In order fully to understand the difficulty of the drafting committee's task, it was important to note that even when Members of the Court agreed on an outcome, they frequently disagreed on the manner of reaching it. It was, however, the very complexity of the task of drafting judgments that ensured their quality. If the Court was really to represent the international community and the various legal traditions it encompassed, it was essential that the voice of each of its 15 Members be heard and be taken equally into account. For that reason, every draft of the future judgment was submitted to the plenary of the Court for discussion.

36. The discussion of the draft judgment for first reading was the most thorough one. Each paragraph was read out before the full Court in both languages, and was then discussed so that every paragraph was reviewed. Although there was some discussion of stylistic changes, the debate generally focused on the substance of the decision, for instance on the approach taken by the drafting committee to reach the result to

which the Court had previously agreed. The first reading was almost like a second deliberation, during which major changes might be proposed and the legal and drafting skills of all Members of the Court were put to the test.

37. At the end of the first reading, the drafting committee met again, and, taking into consideration all the remarks of their colleagues and the decisions taken by the plenary, produced a new draft called the "draft judgment for second reading", which was circulated to all Members of the Court who then met in plenary session to discuss it. On that occasion, however, the text was not systematically read paragraph by paragraph. Except when a paragraph was either new or substantially amended, the President went through each page, asking whether the Members had comments about it; if there were none, the Court moved on to the next page, and so on. Since the draft for a second reading was the product of longer prior discussions, most comments at that stage concerned questions of style. For instance, the judges paid particular attention to the exact correspondence between the French and English version of the draft. A slight change in style in one language might require a change in the other text. Sometimes an apparently stylistic proposal might change the meaning of a whole sentence, or even a paragraph, leading to a debate on a certain point of a legal issue. The second reading would normally take a number of days, and again required careful and attentive work. When the Court had finished reviewing the reasoning of the decision, the President asked the Registry to read out the *dispositif*. The critical moment of voting had then arrived. One by one, the Members of the Court, in inverse order of seniority, were called on to vote by the President. The vote was registered orally and could only be expressed in a yes or no, with no abstention permitted. If the *dispositif* consisted of several paragraphs, each was voted on separately.

38. Once the votes had been tallied, the decision was almost ready. The Court then determined whether the French or the English version would be the authentic one. The decision still needed to be finalized by amending the text to reflect the remarks made and the decisions taken during the second reading. That was done by the Registry, after consultation with the drafting committee, if necessary. A date was then fixed for the public reading of the decision, and at that point, the drafting committee had effectively completed its task.

39. The drafting of a judgment unfolded over a period of from three months in some cases to eight or nine in others. His description of Court's work had, however, been slightly simplified. In very complex cases, there were sometimes one or two additional rounds of readings by the plenary. He had also omitted the procedure for the drafting of individual and separate opinions by Members of the Court. He hoped he had given an idea of the way in which the Court's decisions came into being, and wished to emphasize the care with which they were drafted. The whole process was aimed at ensuring that in each case the decision reached by the Court was the best possible one and was drafted in the best possible way. As the Court prepared to celebrate its sixtieth birthday, at a time when its popularity with the international community was historically unmatched, he hoped there was agreement that those procedures and working methods had proved efficient.

40. That was not to say that the Court and its work could not be improved. It had undertaken a thorough review of its working methods in recent years and, as a result, had introduced measures to enhance its internal functioning and to encourage greater compliance by parties with previous measures aimed at accelerating the procedure in contentious proceedings. The Court had also recently modernized and reorganized its Registry. The Court was continually reflecting on how to improve its work, and was open to suggestions in that domain. Not all, however, depended on the Court itself. If the Court's role as the principal judicial organ of the United Nations was to be strengthened in future, the international community also had a significant part to play. The Secretary-General, in his report entitled "In Larger Freedom: Towards Development, Security and Human Rights for All" had suggested that in order to reinforce the Court and make it more efficient, States that had not yet done so should consider filing a declaration recognizing its compulsory jurisdiction, and recognizing also that the duly authorized United Nations organs and specialized agencies should have greater recourse to the Court's advisory procedure. The Court supported those recommendations wholeheartedly.

41. In the 2005 World Summit Outcome, the Heads of State and Government had recognized "the important role of the International Court of Justice ... in adjudicating disputes among States and the value of its work" (A/60/1, para. 134 (f)). He assured the

Committee that the Court would continue to perform that role to the best of its ability and that it was ready and willing to fulfil other duties that might be entrusted to it.

42. **Mr. Gómez Robledo** (Mexico) said that he had seen at first hand the efforts made by the Court, despite its heavy workload, to resolve cases within the time frame requested by the parties and to respond to questions from them. With regard to the issue of the Court's official languages, his delegation had on many occasions expressed regret at the fact that Spanish was not one of them. However, after hearing the statement by the President of the Court, he understood that the volume of documentation produced by the Court and the standards of quality required meant that a substantial increase in financial and human resources would be needed for the addition of another official language. Nonetheless, his delegation continued to hope that Spanish would be added as an official language of the Court. Failing that, it would be useful for information about the Court in Spanish to be disseminated in Spanish-speaking countries, where many law students did not have the high level of competence in French or English required to understand the Court's rulings fully.

43. He asked what the implications of the choice of authentic language of the judgment were, in particular whether only the authentic-language version could be invoked in a later procedure. He would also like to know the origin of the rule that judges could not abstain from voting.

44. **The Chairman** said that, as a representative of a Spanish-speaking country, he endorsed the comments of the representative of Mexico about multilingualism in the Court.

45. **Mr. Matsimouka** (Congo) asked whether the Court, before handing down a judgment, considered only documents provided by States or whether it conducted appropriate investigations of its own. He also enquired whether mechanisms were in place to monitor the implementation of judgments in the relevant States and, if not, how the Court ensured implementation. In the case concerning the *Land and maritime boundary between Cameroon and Nigeria* (*Cameroon v. Nigeria: Equatorial Guinea intervening*), some unrest had occurred in each State after the judgment had been handed down. He would like to know how the Court had responded to those difficulties.

46. **Mr. Samy** (Egypt) said that the 2005 World Summit Outcome had not given as much prominence to the role of the International Court of Justice in the process of United Nations reform as his delegation would have liked. He asked how the Court, as one of the principal organs of the United Nations, envisaged its role in the strengthening of the Organization.

47. **Mr. Shi** Jiuyong (President of the International Court of Justice), responding to the comments made by the representative of Mexico, agreed that it was regrettable that the Court had only two official languages. That situation had been inherited from the time of the Permanent Court of International Justice, whose only official languages had been French and English, French being the most frequently used in deliberations. Since the Second World War and the establishment of the International Court of Justice, English had become more widely used, but all statements made in either language during proceedings were interpreted simultaneously into the other. Any increase in the number of official languages would require an amendment to the Statute of the Court and an increase in budget, which, at a time of financial difficulties in the Organization, was almost impossible to envisage. Even dissemination of information about the Court's work in other languages would be problematic because the Court had very limited translation facilities.

48. However, a brochure containing information about the Court, prepared by the United Nations Secretariat in New York, had been published in the six official languages of the Organization. In addition, the Secretariat issued a paper every few years containing summaries of the Court's decisions, also in the six official languages. Universities in Mexico might already have those publications in their libraries.

49. The Court's decisions were drafted in both official languages, yet one version was always chosen as the authentic version. That had been a tradition of the Court since its establishment in 1946. If a dispute arose with respect to the interpretation of a judgment, the authentic-language version was considered authoritative. The choice of authentic language depended on the case. If both parties were English-speaking, the authentic language chosen would be English; sometimes a system of alternation between

French and English was employed. His personal preference would be to regard both language versions as authentic. However, such a policy would be unlikely to win the approval of a majority of the Court.

50. Turning to the issues raised by the representative of the Congo, he said that the only documents considered authoritative for the purposes of the Court's deliberations and judgments were the written documents provided by both parties to a case. Other publicly available material could be used for reference only.

51. Since the Court's establishment, implementation of its judgments had generally been satisfactory because its jurisdiction was based on the consent of the parties. The case involving Cameroon and Nigeria was a sensitive one. When the judgment had been pronounced some years previously, the Secretary-General had met with the Presidents of the two countries and had agreed that a joint commission for the implementation of the judgment should be established. In the northern sector of the boundary, implementation was now almost complete. In other disputed areas of the land boundary, the parties had withdrawn their troops and agreed to implement the judgment. However, the process would be time-consuming and costly as the boundary terrain was rough. The main remaining problem area was the Bakassi Peninsula. The parties had agreed on implementation in that area but there were still issues to resolve, such as the procedure for Nigeria's withdrawal of its troops.

52. The Court had no actual implementation mechanisms. However, if one party to a case did not comply with the Court's judgment, the other party could, under Article 94 of the Charter of the United Nations, request the Security Council's assistance. For example, in the case concerning the *Territorial dispute* (*Libyan Arab Jamahiriya/Chad*), the Court had awarded a certain area of land to Chad. However, following difficulties in implementing the judgment, the parties had requested the Security Council to provide an observer mission to oversee the withdrawal of Libyan troops. The situation in the area was now stable.

53. In reply to the question raised by the representative of Egypt, he said that the Court fully supported the Secretary-General's proposals for United Nations reform. It was broadly satisfied with its own procedures, although there might be room for improvement. There was a special committee responsible for reviewing the Rules of Court and their implementation. However, the Court had no specific proposals for its own reform.

The meeting rose at 12.20 p.m.