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Chairperson: Ms. Picco . . . . . (Monaco)

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The meeting was called to order at 10.20 a.m.

Agenda item 79: Report of the International Law Commission on the work of its sixty-second session (A/65/10 and A/65/186)

1. **The Chairperson** said that the untimely passing in 2010 of two esteemed international lawyers, Sir Ian Brownlie, former member of the International Law Commission and former Special Rapporteur on the effects of armed conflicts on treaties, and Ms. Paula Escarameia, current member of the International Law Commission, was a great loss, not only for those who had the chance to be their friends and colleagues, but for the international legal community at large.

2. Turning to the report of the International Law Commission, she said that it featured a variety of complex and timely legal issues to the understanding of which the Commission was providing its invaluable contribution. The richness, density and quality of the report attested to the unique and irreplaceable role that the International Law Commission continued to play in the process of codification and progressive development of international law. In connection with the item, delegates were also asked to note the report of the Secretary-General entitled "Assistance to special rapporteurs of the International Law Commission" (A/65/186).

3. **Mr. Wisnumurti** (Chairman of the International Law Commission), introducing the Commission's report (A/65/10), said that the work of the Commission at its sixty-second session had yielded important substantive outcomes. In adopting 59 additional guidelines on reservations to treaties, it had completed the entire set of guidelines and intended to adopt the final version at the close of the current quinquennium next year; it had commenced the second reading of the draft articles on the effects of armed conflicts on treaties and had referred all 17 draft articles, together with an annex, proposed by the Special Rapporteur, to the Drafting Committee; it had provisionally adopted five draft articles on the protection of persons in the event of disasters; it had continued its substantive discussion on the expulsion of aliens; within the context of working groups, it had concluded work with respect to shared natural resources, deciding not to pursue any further the question of transboundary oil and gas resources, and further clarified issues to be considered in relation to the obligation to extradite or prosecute (*aut dedere aut judicare*).

4. Moreover, through its study groups, the Commission had continued its discussions on the most-favoured-nation clause and treaties over time. The Commission had not been in a position to take up the second report of the Special Rapporteur on the topic "Immunity of State officials from foreign criminal jurisdiction" and would do so the following year.

5. Turning to chapters I to III of the report, he noted that the Commission had elected Mr. Huikang Huang (China) to fill a casual vacancy occasioned by the resignation of Ms. Hanqin Xue following her election to the International Court of Justice. Before her resignation, Ms. Xue had served as the first female Chairperson of the Commission. A topic-by-topic overview of the Commission's achievements for the session could be found in chapter II, while chapter III alerted Governments to specific issues on which their comments would be of particular interest to the Commission in its future consideration of particular topics.

6. Turning to chapter XIII, pertaining to other decisions and conclusions of the Commission, he noted that the Commission had held a wide-ranging discussion on settlement of disputes clauses, on the basis of a note by its secretariat (A/CN.4/623). Among the issues that had been raised was the need for the Commission to examine the question of inclusion of such clauses in its draft articles on a case-by-case basis, the usefulness of seeking information from regional bodies on the way in which they addressed dispute settlement questions and the possible utility of drafting model clauses for inclusion in acceptances of the jurisdiction of the International Court of Justice under article 36 of its Statute. Discussions on the issue would continue in 2011.

7. Pursuant to the request contained in General Assembly resolution 64/116, the Commission had once more offered its comments on the rule of law at the national and international levels. The rule of law was a cross-cutting theme that bound the international community together as it sought to build peaceful nations governed by law. The rule of law constituted the very essence of the Commission in its mission of preparing drafts and engaging in the precise formulation and systematization of rules of international law. Like his predecessors, the Chairman highlighted the special nature of the relationship between Governments and the Commission and the unique interaction that it engendered in the arduous

process of progressive development of international law and its codification. Feedback and information from Governments, especially with regard to State practice, was crucial to the Commission's mission and had bearing on the final product.

8. Special rapporteurs were the driving force behind the Commission's work. The statutory responsibility reposed in them was a time-tested and effective system for the progressive development and codification of international law, but also placed a heavy burden on individual rapporteurs. The honorariums which had been paid to them in the past had been designed primarily to acknowledge an evidently substantial sacrifice of time and resources. Since 2002, the Commission had drawn the General Assembly's attention to the need to reconsider the restoration of honorariums. The Commission was confident that, through consideration by the Main Committees concerned, a satisfactory solution could be found for an appropriate recommendation to be made to the Assembly.

9. The Commission valued its cooperation and relationship with other bodies. It attached special significance to what had become a symbiotic relationship with the International Court of Justice. The annual visit of the President of the Court often served to buttress, at the formal level, the substantive synergy that pervaded the work of the Court and of the Commission. The Commission would make efforts to liaise with new bodies as those were established. The Commission noted with interest the establishment of the African Union Commission of International Law and welcomed its willingness to establish cooperation with the Commission.

10. The *Yearbook of the International Law Commission* served as an important repository of the Commission's works. Its early availability in the various official languages would foster knowledge, dissemination and wider appreciation of international law. The Commission was therefore encouraged by the voluntary governmental contributions to the trust fund on the backlog relating to the *Yearbook*. The Commission was also grateful to Governments for their generous contributions to the International Law Seminar, which was pivotal to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

11. The Commission had been ably assisted in its work by the Codification Division of the Office of Legal Affairs. The Secretariat's studies and research projects, in particular its note on "Settlement of disputes clauses" (A/CN.4/623) issued in 2010, were part and parcel of the consolidated methods and techniques of the Commission's work. Given that the 2011 session would be the last of the current quinquennium, it was envisaged to hold a session of 12 weeks in order to conclude several projects.

12. Turning to chapter IV of the report, he said that the topic of reservations to treaties had been on the Commission's programme of work since 1993. In 2010, the Commission had considered several reports of the Special Rapporteur (A/CN.4/614/Add.2), (A/CN.4/624 and Add.1 and 2) and (A/CN.4/626 and Add.1). Addendum 2 to the fourteenth report and the fifteenth report dealt with the legal effects of reservations and interpretative declarations and reactions thereto. The sixteenth report considered the question of reservations and interpretative declarations in relation to the succession of States. By the close of the session, the Commission had provisionally adopted the entire set of 59 guidelines constituting the Guide to Practice on Reservations to Treaties. The Commission welcomed comments from States and international organizations on the adopted guidelines and drew their attention, in particular, to the guidelines in sections 4.2, on the effects of an established reservation, and 4.5, on the consequences of an invalid reservation.

13. The Commission intended to adopt the final version of the Guide to Practice at its session the following year. In so doing, the Commission would take into consideration the observations submitted by States, international organizations and other organs with which it cooperated, together with further observations that would be received by the secretariat of the Commission before 31 January 2011.

14. Focusing first on guidelines 2.6.3 and 2.6.4, which dealt with the freedom to formulate objections and with the freedom for the author of an objection to oppose the entry into force of the treaty vis-à-vis the author of the reservation, he noted that under guideline 2.6.3, a State or an international organization could formulate an objection to a reservation irrespective of the question of the permissibility of that reservation. In that regard, the Commission was of the view that the 1951 Advisory Opinion of the International Court of Justice on *Reservations to the Convention on the*

Prevention and Punishment of the Crime of Genocide, according to which the object and purpose of the treaty would limit both the freedom to formulate reservations and the freedom to object to them, was outdated as it did not correspond to contemporary international law. Nonetheless, the wording of the guideline left open the question of whether the permissibility of an objection could be challenged on the grounds that the objection was contrary to a norm of *jus cogens* or to a general principle of international law.

15. Guideline 2.6.4, which reiterated the rule set out in article 20, paragraph 4 (b), of the l969 and 1996 Vienna Conventions, stated that an objecting State or international organization could oppose the entry into force of the treaty as between itself and the author of the reservation. In order to do so, the objecting State or organization needed to accompany its objection with an expression of that intention, pursuant to guideline 2.6.8 without having to state the reasons for its position.

16. Guideline 3.3.2 dealt with the individual acceptance of an impermissible reservation and stated that such acceptance would not cure the nullity of the reservation. The Commission was of the view that the impermissibility of a reservation was the objective consequence of the prohibition of the reservation as provided in the treaty, or of the incompatibility of the reservation with the object and purpose of the treaty. Thus the Commission had adopted the position that the acceptance of an impermissible reservation was devoid of legal effect.

17. The principle stated in guideline 3.3.2 applied only to individual acceptances by States and international organizations. Guideline 3.3.3 addressed the different scenario of collective acceptance where a reservation that was prohibited (explicitly or implicitly) by the treaty or was incompatible with its object and purpose was formulated by a State or an international organization. Subsequently, another contracting State or organization which regarded the reservation as impermissible requested the depositary to communicate that position to all the contracting States and organizations but did not raise an objection. Following such a notification by the depositary, if no contracting State or organization, duly alerted, objected to the reservation producing its intended effects, the reservation was then "deemed permissible" by virtue of the unanimous acceptance thereof, which could be equated to an agreement among the parties that modified the treaty. The silence of the guideline as to the time period within which the contracting States and organizations were expected to react should be regarded as implying that such a reaction should occur within a reasonable period of time. Furthermore, the wording of the guideline should be understood as allowing for the possibility of the reservation being declared impermissible by a body competent to decide on such matters.

18. Section 3.4 dealt with the permissibility of reactions to reservations, a question that had not been addressed in the Vienna Conventions. The question arose in two different contexts. Guideline 3.4.1 addressed a first situation by stating the impermissibility of the express acceptance of an impermissible reservation. Guideline 3.4.2 addressed a very particular category of objections, sometimes called "objections with intermediate effect", whereby a State or an international organization, while not opposing the entry into force of the treaty between itself and the author of the reservation, purported to exclude, in its relations with the author of the reservation, the application of provisions of the treaty to which the reservation did not relate.

19. Guideline 3.4.2 enunciated two conditions for the permissibility of an objection with intermediate effect. The first condition, which resulted from the practice concerning the formulation of such objections, was that the additional provisions the application of which was excluded by the objection needed to have a "sufficient link" with the provisions to which the reservation related. The Commission had retained the expression "sufficient link" because it left room for further clarification from future practice, also considering that the guideline related more to the progressive development of international law than to its codification. The second condition was that the objection did not defeat the object and purpose of the treaty in the relations between the author of the reservation and the author of the objection.

20. Guideline 3.5 dealt with the permissibility of an interpretative declaration. It stated two alternative grounds for the impermissibility of an interpretative declaration, namely that the declaration was prohibited by the treaty or that it was incompatible with a peremptory norm of general international law. The Commission had decided not to mention the incompatibility with the object and purpose of the treaty as an additional ground for the impermissibility of an interpretative declaration because a declaration

incompatible with the object and purpose of the treaty would actually be a reservation; by definition an interpretative declaration did not purport to modify the legal effects of a treaty but only to specify or clarify them. Furthermore, the Commission had declined to consider that an interpretation which was objectively wrong — for example, one that was contrary to the interpretation given by an international court adjudicating the matter — should be declared impermissible.

21. Guideline 3.5.1 addressed the situation of a unilateral statement which purported to be an interpretative declaration but was in fact a reservation. It provided that the permissibility of such unilateral statement must be assessed in accordance with the provisions of guidelines 3.1 to 3.1.13 concerning the permissibility of reservations.

22. Similarly, guideline 3.5.2 dealt with the permissibility of a conditional interpretative declaration, i.e., a declaration proposing a certain interpretation which was a condition for the consent of its author to be bound by the treaty. The guideline stated that the permissibility of such a declaration should be assessed in accordance with the provisions of guidelines 3.1 to 3.1.13.

23. Furthermore, guideline 3.5.3 indicated that the competence to assess the permissibility of a conditional interpretative declaration was subject to the same rules as the competence to assess the permissibility of a reservation. Guidelines 3.5.2 and 3.5.3 had been placed in square brackets, pending a final decision by the Commission on the treatment of conditional interpretative declarations in the Guide to Practice.

24. With regard to the permissibility of reactions to interpretative declarations, guideline 3.6 stated the general principle that an approval of, opposition to, or recharacterization of, an interpretative declaration was not subject to any conditions for permissibility. In that regard, the Commission considered that whether the interpretation proposed by an interpretative declaration which was approved or opposed was correct, or whether a recharacterization of an interpretative declaration as a reservation was accurate, were different issues which in no way implied that a given reaction to the interpretative declaration or its recharacterization was permissible or impermissible.

25. The principle stated in guideline 3.6 was subject to two exceptions, however, which were addressed in guidelines 3.6.1 and 3.6.2. Guideline 3.6.1 transposed the rules applicable to the permissibility of interpretative declarations, as reflected in guideline 3.5, to the approval of such declarations, by stating that an approval of an impermissible interpretative declaration was itself impermissible. Guideline 3.6.2 stated the impermissibility of an opposition to an interpretative declaration, to the extent that such opposition did not comply with the conditions for permissibility of an interpretative declaration set forth in guideline 3.5. As was explained in the commentary, that situation was particularly evident in the case where an opposition to an interpretative declaration made in respect of a treaty that prohibited such declarations was expressed through the formulation of an alternative interpretation.

26. Turning to the guidelines in part 4, dealing with the legal effects of reservations and interpretative declarations, he said that, while not creating a specific category of reservations, the concept of establishment of a reservation was of great significance for defining the effects of reservations. Guideline 4.1 enunciated, in general terms, the three requirements for the establishment of a reservation, namely its permissibility, its formulation in accordance with the required form and procedures and its acceptance by a contracting State or a contracting organization.

27. Guideline 4.1.1 dealt with the case of the establishment of a reservation that had been expressly authorized by a treaty. The first paragraph indicated the specificity of the establishment of such a reservation, which was the fact that no subsequent acceptance by the other contracting States and contracting organizations was required to that effect, unless the treaty so provided. The second paragraph indicated the only condition for the establishment of a reservation expressly authorized by a treaty, namely that the reservation must be formulated in accordance with the required form and procedures. Guideline 4.1.2 addressed the specific case of a reservation to a treaty the application of which in its entirety between all the parties was an essential condition of the consent of each one to be bound by the treaty. It indicated that, in such case, the acceptance of the reservation by all contracting States and organizations was a necessary condition for the establishment of the reservation. Finally, guideline 4.1.3 provided that the establishment of a reservation to a constituent instrument of an international organization required also the acceptance

of the reservation by the competent organ of the organization.

28. Section 4.2 dealt with the effects on an established reservation. Guideline 4.2.1 indicated that the author of a reservation became a contracting State or a contracting organization to the treaty as soon as a reservation was established in accordance with guidelines 4.1 to 4.1.3. Guideline 4.2.2 dealt with the effect of the establishment of a reservation on the entry into force of a treaty. In conformity with article 20, paragraph 4 (c), of the Vienna Conventions, paragraph 1 provided that, when a treaty had not yet entered into force, the author of a reservation must be included in the number of contracting States and contracting organizations required for the treaty to enter into force once the reservation was established.

29. Paragraph 2, however, reserved the possibility of including the author of the reservation at an earlier date in the number of contracting States and contracting organizations required for the treaty to enter into force, if no contracting State or contracting organization was opposed in a particular case. The purpose of paragraph 2 was to cover — without passing judgment on its merits — what was probably the predominant practice of depositaries, including, in particular, that of the Secretary-General of the United Nations.

30. Guideline 4.2.3 indicated that the establishment of a reservation constituted its author a party to the treaty in relation to contracting States and contracting organizations in respect of which the reservation was established, if or when the treaty was in force.

31. Guideline 4.2.4 addressed the effect of an established reservation on treaty relations. Paragraph 1 reiterated the principle contained in article 21, paragraph 1 (a), of the 1969 and 1986 Vienna Conventions. Paragraphs 2 and 3 explained the specific consequences of that principle on the rights and obligations under the treaty when an established reservation excluded or modified the legal effect of certain provisions of a treaty. They also enunciated the principle of reciprocal application of a reservation as between its author and the other parties to the treaty with regard to which the reservation was established.

32. The principle of reciprocal application of a reservation was, however, subject to certain exceptions, which were addressed in guideline 4.2.5. The first exception had to do with the nature of the obligations under the provision to which the reservation related or of the object and purpose of the treaty. In addition to the case of human rights treaties, the exception also applied to treaties on commodities or environmental protection, some demilitarization or disarmament treaties, and international private law treaties providing for uniform law. In another scenario, reciprocal application was not possible because of the content of the reservation, as in the case of reservations purporting to limit the territorial application of a treaty or of reservations motivated by situations pertaining specifically to the reserving State.

33. Section 4.3 concerned the effect of an objection to a valid reservation. The introductory guideline 4.3 indicated that, unless a reservation had been established with regard to an objecting State or organization, the formulation of an objection to a valid reservation precluded the reservation from having its intended effects as against that State or organization.

34. Guideline 4.3.1 stated that, except in the case mentioned in guideline 4.3.4, an objection to a valid reservation did not preclude the entry into force of the treaty as between the objecting State or organization and the reserving State or organization. Pursuant to guideline 4.3.4, which reproduced the rule set forth in article 20, paragraph 4 (b), of the 1969 and 1986 Vienna Conventions, the entry into force of the treaty between the objecting State or organization and the reserving State or organization was precluded if the objecting State or organization had definitely expressed an intention to that effect in accordance with guideline 2.6.8. Guideline 4.3.2 specified that the entry into force of the treaty between the author of a valid reservation and the author of an objection would occur as soon as the author of the reservation had become a contracting State or a contracting organization in accordance with guideline 4.2.1 and the treaty had entered into force. Guideline 4.3.3 related to those situations in which unanimous acceptance was required for the establishment of a valid reservation. In such cases, any objection to the reservation by a contracting State or by a contracting organization precluded the entry into force of the treaty for the reserving State or organization.

35. Guideline 4.3.5 concerned the effects of an objection on treaty relations. Paragraph 1 reiterated the rule set forth in article 21, paragraph 3, of the Vienna Conventions by describing, in general terms, the effect of an objection on the treaty relations between the author of a valid reservation and an objecting State or

organization, namely the fact that the provisions to which the reservation related did not apply as between the author of the reservation and the objecting State or organization, to the extent of the reservation. Paragraphs 2 and 3 of the guideline, which were to be understood as specifications of the general rule enunciated in paragraph 1, concerned, respectively, the exclusionary or modifying effect produced by the reservation on certain provisions of the treaty. Paragraph 4 indicated that all provisions of the treaty other than those to which the reservation related would remain applicable as between the author of the reservation and the objecting State or organization.

36. Guideline 4.3.6 dealt with the effects of the so-called "objections with intermediate effect". Those objections were subject to certain conditions for permissibility, as stated in guideline 3.4.2. Paragraph 1 of guideline 4.3.6 indicated that the result of an objection with intermediate effect which was formulated in accordance with guideline 3.4.2 was the non-applicability, in the treaty relations between the author of the reservation and the author of the objection, of a provision to which the reservation did not relate but which had a sufficient link with the provisions to which the reservation did relate.

37. Paragraph 2 recognized that the reserving State or organization could prevent an objection with intermediate effect from producing its intended effect by opposing, within a period of 12 months following the notification of such an objection, the entry into force of the treaty between itself and the objecting State or organization. In the absence of such opposition, the treaty would apply between the author of the reservation and the author of the objection, to the extent provided by the reservation and the objection.

38. Guideline 4.3.7, which was based on the principle of mutual consent, stated the right of the author of a valid reservation not to be compelled to comply with the treaty without the benefit of its reservation. The guideline thus excluded, in respect of valid reservations, the possibility that an objection might produce what was sometimes referred to as a "super-maximum effect".

39. Section 4.4 concerned the effects of a reservation on rights and obligations outside of the treaty. Guideline 4.4.1 stated that a reservation, acceptance of it or objection to it neither modified nor excluded the respective rights and obligations of the authors under another treaty to which they were parties. Guideline 4.4.2 indicated that a reservation did not of itself affect the rights and obligations under customary international law, while guideline 4.4.3 referred to the absence of effect of a reservation on a peremptory norm of general international law (*jus cogens*).

40. Section 4.5 addressed the consequences of an invalid reservation. Guideline 4.5.1 stated the principle that a reservation that did not meet the conditions of formal validity and permissibility set out in parts 2 and 3 of the Guide to Practice was null and void, and therefore devoid of legal effect. Guideline 4.5.2 purported to clarify the status of the author of an invalid reservation in relation to the treaty. The phrase "contrary intention" in paragraph 1 referred to the intention of the reserving State or international organization not to be bound by the treaty at all, should the reservation be deemed invalid; if such an intention could be identified, the presumption set out in paragraph 1 was overturned. Paragraph 2 then provided a non-exhaustive list of factors that had to be taken into consideration in order to identify the intention of the author of the reservation. Such factors included statements by, or subsequent conduct of, the author of the reservation; reactions by other contracting States and contracting organizations; the provision or provisions to which the reservation related; and the object and purpose of the treaty.

41. In connection with guideline 4.5.2, a proposal had been made to include a provision recommending that additional options be opened for the withdrawal from a treaty by the author of a reservation that was found invalid. The Commission had decided not to include such a provision, since it was difficult to reconcile with the rules set forth in articles 42, 54 and 56 of the Vienna Conventions.

42. Guideline 4.5.3 dealt with reactions to an invalid reservation. While the nullity of an invalid reservation did not depend on the objection or the acceptance by a contracting State or organization, it was recommended that a contracting State or organization which considered a reservation to be invalid should, if it deemed it appropriate, formulate a reasoned objection as soon as possible. Guideline 4.6 referred to the absence of effect of a reservation on the relations between the other parties to the treaty.

43. Section 4.7, which dealt with the effects of interpretative declarations, purported to fill a gap in the Vienna Conventions, while remaining within the logic of the Conventions and, in particular, articles 31 and 32 thereof, on the interpretation of treaties. Guideline 4.7.1 referred to the role of an interpretative declaration in clarifying the terms of a treaty. The first paragraph indicated that, while an interpretative declaration did not modify treaty obligations, it could, as appropriate, constitute an element to be taken into account in interpreting the treaty in accordance with the general rule of interpretation of treaties. The Commission considered that interpretative declarations did not, as such, produce an autonomous effect, as they came into play only as an auxiliary or complementary means of interpretation corroborating a meaning given by the terms of the treaty, considered in the light of its object and purpose. Furthermore, as stated in the second paragraph of guideline 4.7.1, the reactions (approvals or oppositions) that might have been expressed with regard to an interpretative declaration by other contracting States or organizations should also be taken into account, as appropriate, in the process of interpretation.

44. Guideline 4.7.2 addressed the effect of the withdrawal or the modification of an interpretative declaration. Although an interpretative declaration in itself did not create rights and obligations for its author or for the other parties to the treaty, it would prevent its author from taking a position contrary to that expressed in its declaration, to the extent that other contracting States or contracting organizations had relied upon the initial declaration.

45. Guideline 4.7.3 addressed the effect of an interpretative declaration approved by all the contracting States and organizations. It stated that an interpretative declaration that had received such approval could constitute an agreement regarding the interpretation of the treaty. That agreement would need to be taken into consideration in interpreting the provisions of the treaty to which it related, in keeping with article 31, paragraphs 2 and 3, of the Vienna Conventions.

46. Part 5, which comprised 20 guidelines, addressed the issue of reservations, acceptances of and objections to reservations, and interpretative declarations in the case of succession of States. While some of the guidelines reflected the state of positive international law on the subject, others pertained to the progressive development of international law or were intended to offer logical solutions to problems to which neither the 1978 Vienna Convention on Succession of States in respect of Treaties nor the relevant practice had provided clear answers thus far. That said, part 5 took as its basis the rules and principles set out in the 1978 Vienna Convention, including the definitions contained therein. Furthermore, the point of departure was that a State had acquired the status of a contracting State or State party to a treaty as a successor State, and not by expressing its consent to be bound by the treaty pursuant to article 11 of the 1969 and 1986 Vienna Conventions.

47. Section 5.1 dealt with reservations in relation to succession of States. Guideline 5.1.1 took as its basis article 20 of the 1978 Vienna Convention, which was the only provision dealing with reservations in relation to State succession. In the same way as article 20, the guideline applied only to newly independent States as defined under article 2, paragraph 1 (f), of the 1978 Convention and reiterated in paragraph 4 of the guideline — namely, States that had gained independence as a result of decolonization. Paragraph 1 of guideline 5.1.1 stated the presumption that a newly independent State which had established its status as a party or as a contracting State to a treaty by a notification of succession would maintain any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession related, unless, when making the notification of succession, it had expressed a contrary intention or formulated a reservation which related to the same subject matter as that reservation. Paragraph 2 recognized the right of a newly independent State to formulate a reservation when making its notification of succession, unless that reservation was impermissible according to subparagraph (a), (b) or (c) of guideline 3.1. Paragraph 3 referred to the rules concerning the procedure for the formulation of a reservation, as set out in part 2 of the Guide to Practice.

48. Guideline 5.1.2, which was intended to fill a gap in the 1978 Vienna Convention, addressed the case of a uniting or separation of States. The guideline dealt with two separate situations. Paragraphs 1 and 2 dealt with the case in which a State formed from a uniting or separation of States succeeded *ipso jure* to a treaty, whereas paragraph 3 referred to the case in which such a State succeeded to a treaty only by virtue of a notification to that effect. Under part IV of the 1978 Vienna Convention, a State formed from a uniting of

States succeeded *ipso jure* to treaties in force for any of the predecessor States at the date of the succession of States, and the same applied, in the context of a separation of States, with respect to treaties in force at the date of the succession of States in respect of the entire territory of the predecessor State or only of that part of the territory of the predecessor State which had become the territory of the successor State. In contrast, under the 1978 Vienna Convention, succession did not occur *ipso jure* in respect of a State formed from a uniting or separation of States with regard to treaties to which the predecessor State was a contracting State at the date of succession of States but which, at that date, were not in force for that State.

49. As reflected in paragraphs 1 and 3 of guideline 5.1.2, the presumption in favour of the maintenance of the reservations of the predecessor State applied irrespective of whether the succession occurred *ipso jure* or on the basis of a notification, subject to the exceptions envisaged in guideline 5.1.3. In contrast, a distinction should be made between the two situations regarding the freedom of the successor State to formulate a new reservation. While there did not seem to be any reason for not recognizing such a freedom when succession occurred on the basis of a notification to that effect, in those cases in which succession to a treaty took place *ipso jure*, it was difficult to contend that the successor State might lighten its obligations by formulating reservations; therefore, paragraph 2 of the guideline ruled out the freedom of such a successor State to formulate new reservations to the treaty.

50. Guideline 5.1.3 indicated the irrelevance of certain reservations in cases involving a uniting of States. According to the provision, when, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of any of them continued in force in respect of the successor State, only the reservations formulated by the State that was a party to the treaty were considered to be maintained. Such a solution was based on the fact that a State could have only one status in respect of a single treaty — in the present case, that of a State party to the treaty.

51. Guideline 5.1.4 concerned the establishment of new reservations formulated by a successor State in accordance with guideline 5.1.1 or 5.1.2. By referring to the general rules contained in part 4 of the Guide to Practice, the guideline purported to clarify that the successor State was in the same position, with respect to the legal effects of that reservation, as any other State or organization that was the author of a reservation.

52. Guideline 5.1.5 laid down the principle that a reservation considered to be maintained by a successor State would retain the territorial scope that it had at the date of the succession of States, unless the successor State expressed a contrary intention. That principle followed logically from the idea of continuity inherent in the concept of a succession to a treaty, whether it occurred *ipso jure* or by virtue of a notification.

53. Some exceptions to that principle were nonetheless provided in guideline 5.1.6, which addressed complex situations that might arise in the context of a uniting of States, to the extent that the treaty itself might, under certain conditions, become applicable to a part of the territory of the successor State to which it was not applicable at the date of the succession of States. Furthermore, guideline 5.1.7 addressed the specific case of the territorial scope of reservations of the successor State in cases of succession involving part of a territory, namely, in the event of the cession of territory or other territorial changes referred to in article 15 of the 1978 Vienna Convention. The principle of the maintenance by a reservation of its territorial scope applied also in those situations, unless the successor State expressed a contrary intention or when it appeared from the reservation itself that its scope was limited to the territory of the successor State that was within its borders prior to the date of the succession of States, or to a specific territory.

54. Guideline 5.1.8 concerned the effects in time of the non-maintenance by a successor State of a reservation formulated by the predecessor State. Reproducing the solution retained in article 22, paragraph 3 (a), of the 1969 Vienna Conventions and in draft guideline 2.5.8 concerning the effects *ratione temporis* of the withdrawal of a reservation, the guideline provided that the non-maintenance of a reservation became operative in relation to another contracting State or organization only when notice of it had been received by that State or organization.

55. Guideline 5.1.9 identified three situations in which a reservation formulated by a successor State should be considered a late reservation within the meaning of guideline 2.3.1, and therefore permitted only if none of the other contracting parties objected. Subparagraphs (a) and (b) referred to reservations made after the date of the notification on the basis of

which the succession to the treaty had occurred. Subparagraph (c) referred to reservations formulated by a successor State other than a newly independent State in respect of a treaty which, following the succession of States, continued in force for that State. In the last case, the formulation of reservations by a successor State was not permitted. However, if the successor State were to formulate a reservation, there would be no grounds for treating that State differently from any other State by refusing it the benefit of the legal regime for late reservations.

56. Section 5.2 dealt with objections to reservations in relation to the succession of States, a question on which the 1978 Vienna Convention was silent. With regard to guideline 5.2.l, the Commission considered that the presumption of the maintenance of reservations, which applied to all cases of succession, could be logically transposed to objections; certain elements of recent practice also appeared to support the maintenance of objections. That solution was, however, subject to the exceptions envisaged in guideline 5.2.2 which, following the same logic as in guideline 5.1.3 concerning reservations, indicated the irrelevance of certain objections in cases involving a uniting of States.

57. Guideline 5.2.3 set out the presumption in favour of the maintenance of objections formulated by a contracting State or organization in respect of reservations of the predecessor State that were considered as being maintained by the successor State in conformity with guidelines 5.1.1 and 5.1.2. That solution also found support in the views expressed by certain delegations during the 1977-1978 Vienna Conference. Guideline 5.2.4 addressed the situation where a contracting State or international organization had not objected in time to a reservation formulated by a predecessor State and considered as being maintained by the successor State. The guideline excluded, in principle, the capacity of that contracting State or organization to object to the reservation in respect of a successor State. However, that was subject to two exceptions: (a) where the succession of States took place prior to the expiry of the time period during which a contracting State or organization could have objected to the reservation and (b) where the territorial extension of the treaty radically changed the conditions for the operation of the reservation. The second exception might occur in situations in which the territorial scope of a reservation was extended because of the extension of the territorial scope of the treaty itself following a uniting of States; those situations were dealt with in guideline 5.1.6.

58. Guidelines 5.2.5 and 5.2.6 dealt with the formulation of objections by a successor State. Paragraphs 1 and 2 of guideline 5.2.5 recognized the capacity of the successor State to formulate reservations in those cases where the succession took place on the basis of either a notification of succession by a newly independent State or a notification to that effect by a successor other than a newly independent State in respect of a treaty that was not in force for the predecessor State at the date of the succession of States. Since, in those cases, the successor State had a choice as to whether or not to succeed to the treaty, there was no reason, in principle, why it could not formulate new objections when establishing its status as a contracting State or a party to the treaty. Moreover, while practice in that area was scarce, there had been cases in which newly independent States had formulated new objections when notifying their succession to a treaty.

59. Paragraph 3 excluded that capacity, however, in those situations covered by guidelines 2.8.2 and 4.1.2, in which a reservation to a treaty must be accepted by all parties. That exception was intended to ensure that a successor State could not, by formulating an objection, compel the reserving State to withdraw from such a treaty. Contrary to the situations envisaged in guideline 5.2.5, the capacity to formulate objections was not recognized for successor States other than newly independent States in respect of which a treaty remained in force, unless the succession took place prior to the expiry of the time period during which the predecessor State could have objected to a reservation. That principle was reflected in guideline 5.2.6. Since in those cases the succession to the treaty did not depend on an expression of intent on the part of the successor State, that State inherited all of the predecessor State’s rights and obligations under the treaty, including objections or the absence thereof.

60. Section 5.3 dealt with acceptances of reservations in relation to the succession of States. More specifically, guidelines 5.3.1 and 5.3.2 addressed the issue of the maintenance of express acceptances formulated by a predecessor State. The solution varied, at least in part, according to whether the succession to the treaty occurred through a notification by the successor State or *ipso jure*. The first scenario was addressed in guideline 5.3.1, on newly independent

States, and in paragraph 2 of guideline 5.3.2, dealing with other successor States with regard to treaties that were not in force for the predecessor State at the date of the succession of States. In that scenario, the presumption of the maintenance of an express acceptance, which appeared logical, might be overturned if the successor State expressed a contrary intention within 12 months of the date of the notification of succession. On the other hand, in cases — addressed in paragraph 1 of guideline 5.3.2 — where succession occurred *ipso jure*, according to guideline 5.2.6, the successor State could not formulate an objection to a reservation to which the predecessor State had not objected in a timely manner. A fortiori, the successor State could not call into question an express acceptance formulated by the predecessor State.

61. Guideline 5.3.3, which addressed the effects *ratione temporis* of the non-maintenance by a successor State of an express acceptance of a reservation by the predecessor State, adopted the same approach as that retained in guideline 5.1.8 concerning the non-maintenance of a reservation. Such non-maintenance became operative in relation to a contracting State or organization only when notice of it had been received by that State or that organization.

62. Finally, section 5.4 dealt with interpretative declarations in relation to the succession of States, another issue on which the Vienna Conventions were silent. The only guideline in that section — guideline 5.4.1 — concerned the status of interpretative declarations formulated by the predecessor State. Given that practice provided little information in that regard, and that interpretative declarations were extremely diverse, both in their intrinsic nature and in their potential effects, the Commission had opted for a cautious and pragmatic approach by recommending, in the first paragraph of guideline 5.4.1, that States should, to the extent possible, clarify their position concerning interpretative declarations formulated by the predecessor State. In the absence of such clarification, a successor State would be considered as maintaining the interpretative declarations of the predecessor State. The second paragraph recognized the existence of situations in which, even in the absence of an explicit position taken by the successor State, the latter's conduct might reveal whether or not it subscribed to an interpretative declaration formulated by the predecessor State.

63. The Commission had not deemed it necessary to devote a specific draft guideline to the successor State's capacity to formulate interpretative declarations, including declarations that the predecessor State had not formulated, since the existence of that capacity followed directly from guideline 2.4.3, which stated that an interpretative declaration could, with some exceptions, be formulated at any time.

64. **Mr. Winkler** (Denmark), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), noted that among the challenges facing the International Law Commission was the underrepresentation of women: the only current female member's term would come to an end in 201l. The Nordic countries expressed concern at the fact that relatively little progress had been made on important topics such as the immunity of State officials and *aut dedere aut judicare*. While it was not clear that rules could be established on the basis of State practice in respect of those topics, and while there was already an evident divergence of views between States and scholars, the Commission nevertheless had much to contribute towards establishing a basis for a more informed dialogue with and among States.

65. He welcomed the fact that after repeated calls for the discontinuation of consideration of the oil and gas aspects of the topic of shared natural resources, the Commission appeared to have decided not to pursue those aspects any further. He wondered how much progress was likely to be made on the topic "Expulsion of aliens", given that detailed rules already existed, other forums were already involved in the application and monitoring of compliance, and comments by a number of Member States would seem to advocate restraint. That said, the Commission had much to offer in terms of practical and comprehensive solutions in law; States' willingness to assist the Commission through the provision of State practice and views on how law should develop was crucial in that process.

66. Turning to chapter IV of the report, he said that the final adoption of the Guide to Practice in 2011 would mark the conclusion of a particularly important piece of work by the Commission, as well as a major contribution to the practical implementation of treaty law. He noted the practice by a growing number of States — including the Nordic countries — of severing invalid reservations from the treaty relations between the States concerned, thereby securing those relations

and opening up the possibility of dialogue within the treaty regime. Draft guideline 4.5.2 was of particular significance in that regard, and he commended the Special Rapporteur for striking the right balance between the views put forward on the topic.

67. **Mr. Salinas** (Chile), speaking on behalf of the Rio Group, said that, while welcoming the provision of an advance copy of parts of the Commission's report, the Rio Group believed it might be worthwhile to consider changing the dates of the Commission's sessions, so as to ensure the early availability of the report. It recognized the need to explore ways to support the important activities of special rapporteurs and chairs of working groups and, in that context, took note of paragraph 397 of the Commission's report. On cost saving measures, the Rio Group agreed with the suggestion in paragraph 399 of the report that any such measures must take into account the quality of the documentation and studies prepared by the Commission.

68. Questionnaires requesting information and comments from Member States should focus more on the main aspects of topics under consideration and be drafted so as to enable States to provide input in a timely manner. Many States had difficulties in providing certain kinds of technical information owing to the differing sizes and infrastructure of international law teams in different countries. It was of the utmost importance, however, that more States should contribute to the debate on the Commission's work.

69. Another way of enhancing the dialogue between the Commission and Member States would be to strengthen contacts between their representatives during the meetings of the Sixth Committee. The thematic dialogue, a setting for informal exchanges of views, should be properly scheduled to avoid overlap with any other important meetings during the General Assembly, and the topics to be discussed should be drawn from a short list announced well in advance.

70. The Rio Group welcomed and encouraged further voluntary contributions by States to the trust fund set up to overcome the backlog in issuance of the Commission's publications, and to the United Nations Trust Fund for the International Law Seminar.

71. Relations between the Commission and the Sixth Committee should continue to be improved so that the Commission received the input it needed to discharge its functions and Member States were able to make use of its valuable work.

72. **Mr. Montecino Giralt** (El Salvador) said that the legal construct of reservations to treaties presented complex problems that could not be artificially simplified, particularly in the case of reservations to multilateral treaties. Over the years the Commission's special rapporteurs had made great contributions on the matter, among them the major shift from a system based on unanimity to a more flexible system. The current Special Rapporteur had wisely chosen to preserve the achievements of the Vienna Conventions but had effectively resolved the problems arising from the ambiguities and gaps in the Conventions, particularly those related to the difference between reservations and interpretative declarations, the question of reservations to bilateral treaties and to human rights treaties, the permissibility of reservations and the regime of objections to reservations. In so doing he had brought greater certainty and clarity to the practice of reservations to treaties, so that it could be based more firmly on legal principles rather than political expediency.

73. Nonetheless, a few of the guidelines could be made clearer. With respect to guideline 2.9.2 (Opposition to an interpretative declaration), his delegation approved the decision to use a separate term ("opposition") to denote a negative reaction to an interpretative declaration and to reserve the term "objection" to denote a negative reaction to a reservation. However, the possibility that an opposition might include the formulation of "an alternative interpretation" required amplification. An alternative interpretation might be offered by the opposing State merely as a recommendation, or it might in fact constitute a new interpretative declaration, subject to all the rules applicable to interpretative declarations in general. Those two possibilities should be clarified, either in the guideline itself or in the commentary to it.

74. Guideline 2.9.3 (Recharacterization of an interpretative declaration) was necessary in order to address the common tendency to formulate reservations under the name of interpretative declarations and the reverse. His delegation supported the Special Rapporteur's position that what mattered was not the name but the content. It approved complementary guidelines 2.9.4 to 2.9.7, but it was concerned that there was no mention of the practical effect of recharacterization. True, as the commentary stated, an attempt at recharacterization did not in and of itself

determine the status of the unilateral statement in question and was not binding on the author of the original declaration or the other contracting parties; the divergence of views could be resolved only through the intervention of an impartial third party with decision-making authority. It was not sufficiently clear, however, how an interpretative declaration could effectively be subject to the regime of reservations.

75. Guidelines 3.3.2 and 3.3.3, which stated in essence that acceptance by one party could not validate an impermissible reservation but that acceptance by all parties could do so, were fully consistent with the basic principles of reservations. However, there was a slight discrepancy between them. Guideline 3.3.2, by its reference to an impermissible reservation, harked back to guideline 3.1, which gave three criteria: a reservation could not be formulated if the reservation was prohibited by the treaty, if the reservation was not one of the specified reservations allowed by the treaty or if the reservation was incompatible with the object and purpose of the treaty. Guideline 3.3.3, on the other hand, mentioned only the first and last of those three elements, and that omission appeared to restrict the effect of collective acceptance. If there was a good reason for the omission, it would be useful to include an explanation in the commentary; otherwise, the wording of the guideline should be adjusted.

76. With regard to section 4.3, the distinction made between the terms “contracting State or contracting organization” and “party”, depending on whether the treaty had entered into force or not, was a useful one and accorded with the definitions in the Vienna Conventions. Although guideline 4.2.1 (Status of the author of an established reservation) was based on article 20, paragraph 4, of the Vienna Conventions, it did not merely repeat the language of the Conventions but adopted a broader approach by referring to the establishment of a reservation, thereby covering situations in which reservations did not require acceptance as well as those in which they did require it. Guideline 4.2.2 (Effect of the establishment of a reservation on the entry into force of a treaty) addressed the situation in which the treaty had not yet entered into force. The most significant part of the guideline was paragraph 2, which took into account a common and well-accepted practice of depositaries, namely, to give effect to the deposit of an instrument of ratification containing a reservation before any other State had accepted the reservation and without giving consideration to the validity or invalidity of the reservation.

77. With respect to section 4.5, the first paragraph of guideline 4.5.3 (Reactions to an invalid reservation), as the Commission itself had said, was a reminder of a fundamental principle embodied in several previous guidelines. That being the case, the paragraph could be deleted, and the idea it expressed, namely that the nullity of an invalid reservation depended on the reservation itself and not on the reactions it might elicit, could be placed in the commentary to guideline 4.5.1 (Nullity of an invalid reservation). Paragraph 2 included a valuable new element that would contribute to the stability and transparency of treaty relations by encouraging States or international organizations that considered a reservation invalid to state their reasons. However, that paragraph could be moved to guideline 4.5.1 as paragraph 2.

78. **Mr. Tichy** (Austria) welcomed the progress made by the Commission on a wide range of issues, but regretted that it had been unable to consider the important topic of immunity of State officials from foreign criminal jurisdiction at either of its past two sessions. It should now give high priority to that very important subject.

79. He congratulated the Commission on the provisional adoption of a complete set of draft guidelines with commentaries and thanked the Special Rapporteur for his remarkable dedication to that work. Further thought should be given, however, to ways of making the draft guidelines more user-friendly, since the numerous cross-references made them somewhat difficult to negotiate.

80. Both draft guidelines 4.2.1 and 4.2.3 dealt with the status of the author of an established reservation, but what was missing was a clarification of whether treaty relations were also established between the author of a reservation and a contracting State or organization that objected to the reservation but had not excluded the treaty’s entry into force as between the two. The treaty’s entry into force in such a situation could only be implicitly deduced from draft guideline 4.2.1. Similarly, draft guideline 4.3 created the assumption that a reservation could be established also with regard to an objecting State or organization, in direct contrast to draft guideline 4.1, which explicitly required acceptance in order for the reservation to be established.

81. Turning to section 4.5, which addressed the consequences of invalid or impermissible reservations, he commended the effort to fill in a gap in the 1969 Vienna Convention. The title of the section referred solely to "invalid" reservations, however, and should be corrected to make it clear that "impermissible" reservations were also covered. The distinction between the two types of reservations was not clear: a definition of the term "invalid" reservations was needed.

82. His delegation concurred with the general rule expressed in the first paragraph of draft guideline 4.5.2 but thought that another look should be taken at the exceptions to that rule set out in the second paragraph, as the factors listed therein did not necessarily enable the intention of the author of the reservation to be ascertained. For example, how did reactions of other contracting States and contracting organizations shed light on the intention of the author? Moreover, it was not clear who must identify the author's intention, as required in the first paragraph. In order to overcome those problems, he suggested that the second paragraph should be deleted and that the words "unless a contrary intention of the said State or organization can be identified", in the first paragraph, should be replaced by the phrase "unless the said State or organization expresses a contrary intention".

83. Section 4.7 of the draft guidelines did not sufficiently clarify the effect of an interpretative declaration: it failed to establish the circumstances under which such a declaration was opposable to other States. Moreover, the consequences of there being a varying number of authors of a declaration were not adequately addressed. For example, treaties concluded in the context of the European Union contained interpretative declarations, some of which were issued by all States parties, some by a group of States parties and other only by individual States parties. Did those declarations have identical or different effects?

84. Part 5, on reservations and State succession, was based on the 1978 Vienna Convention on Succession of States in respect of Treaties, but there were very few parties to that instrument and it was generally seen as only partly reflecting customary international law. He questioned the to need for provisions on "newly independent States" now that the process of decolonization lay in the past. The Commission itself no longer used that term: for instance, it was not included in the articles on the nationality of natural persons in relation to the succession of States.

85. **Mr. Hernández García** (Mexico), referring to section 4.2, on the effects of an established reservation, said that in keeping with article 20, paragraph 4 (c), of the 1969 Vienna Convention, in order for a State that had formulated a reservation to a treaty to be considered a party to that treaty, at least one other contracting State must have accepted the reservation. His delegation endorsed the application of the system of "relative participation", under which each State or international organization had the option to decide for itself whether a reservation was opposable to it or not, with the treaty relationship between the author of the reservation and the author of the acceptance being governed according to the principle of reciprocity.

86. Draft guideline 4.2.4 provided welcome clarification of article 21, paragraph 1 (a), of the 1969 Vienna Convention, in stipulating that an established reservation "excludes or modifies … the legal effect of the provisions of the treaty to which the reservation relates".

87. The 1969 Vienna Convention had left a gap regarding the consequences of an invalid reservation, which the Commission was laudably attempting to fill. However, his delegation was concerned about the introduction of the idea that an invalid reservation did not have to be objected to by States, since the Convention stipulated the need for such objections. The idea should be more thoroughly analysed, since it could create legal uncertainty in some situations.

88. His delegation endorsed draft guideline 4.5.1, on the nullity of an invalid reservation that did not meet the conditions of formal validity and permissibility. It likewise approved of draft guideline 4.5.2, to the effect that unless a contrary intention had been manifested by the State or international organization that had formulated an invalid reservation, the treaty would be applicable to it without the benefit of the reservation. That was the most appropriate approach from the standpoint of the development of international law, it being left up to the State or organization in question to decide whether to modify or withdraw its reservation so as not to be a party to the treaty.

89. **Ms. Illková** (Slovakia) said that as one of two States that had emerged from the former Czechoslovakia, her country had had to solve a number of questions to which neither the 1978 Vienna

Convention nor the relevant practice had provided answers. In its experience with the separation of States, clarification of the territorial and temporal scope of reservations had been particularly relevant. The extension of the presumption of continuity, explicitly envisaged for newly independent States in article 20, paragraph 1, of the 1978 Vienna Convention, was all the more important for successor States like her own.

90. Her delegation welcomed draft guidelines 5.1.7, 5.1.8 and 5.1.9 on the territorial scope and timing of the effect of non-maintenance by a successor State of a reservation formulated by the predecessor State — issues not addressed in the 1978 Vienna Convention. Of particular significance was the fact that draft guideline 5.1.7 covered not only treaties that were in force for the successor State at the time of State succession but also those not in force for the successor State at that time, but to which it was a contracting State. It did not, however, apply to territorial treaties concerning a border regime or other regime on the use of specific territory. Draft guideline 5.2.5, on the capacity of a successor State to formulate objections to prior reservations, was useful, although it did not take into account all the complexities of the problem.

91. **Ms. Wasum-Rainier** (Germany) said that the Commission's guidelines on reservations to treaties reflected an extraordinary depth of analysis and would serve as a comprehensive manual for international jurisprudence, State practice and legal scholarship for years to come.

92. One of the most important aspects of the Guide to Practice, namely the legal effects of impermissible reservations on treaty relations, was an issue so far unresolved in international law. Guideline 4.5.2 introduced the general presumption that, in the case of an impermissible reservation, the reserving State became a party to the treaty without the benefit of the reservation unless there was a clear indication that it did not wish to be bound under those circumstances. Although her delegation admired the Commission's efforts to resolve that outstanding question, it was reluctant to introduce such a new rule in the Guide to Practice.

93. A positive presumption could not be deduced from existing case law or State practice, certainly not as a general rule with respect to all treaties. It would be difficult to identify a consistent State approach even in the area of human rights treaties. The cases most often cited in support of the Commission's proposal needed to be evaluated in their special context, the Council of Europe, which comprised a close-knit regional group of States upholding a common set of social and political values expressed in the European Convention on Human Rights. States members of the Council had agreed to be subject to a mandatory judicial system of scrutiny and authoritative interpretation; their participation implied the risk for a reserving State that, if the Convention organs considered the reservation impermissible, the State would be bound without the benefit of its reservation. That specific European treaty context, and a few other very special treaty contexts where a positive presumption might be appropriate, should not be taken as a basis for a general rule.

94. The broad positive presumption contained in guideline 4.5.2 might make States more reluctant to become parties to treaties. Many States, often for constitutional reasons, would be forced to state explicitly that their consent to be bound was dependent on their reservations and might prefer not to become a party if their reservation was considered impermissible. That situation would give rise to a number of questions: what would happen if it was that State's consent to be bound that permitted the treaty to enter into force; how was the impermissibility of a reservation to be determined; and what were the implications for treaty relations while the status of the reservation was unresolved. Rather than creating legal clarity, the general positive presumption proposed in the draft guidelines would create uncertainty in treaty relations and hamper their development.

The meeting rose at 1 p.m.