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Chairperson: Ms. Rodríguez Pineda (Vice-Chairperson) (Guatemala)

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In the absence of Mr. Al Bayati (Iraq), Ms. Rodríguez Pineda (Guatemala), Vice-Chairperson, took the Chair.

The meeting was called to order at 3.05 p.m.

Agenda item 73: Criminal accountability of United Nations officials and experts on mission *(continued)*
(A/C.6/63/L.10)

1. **Ms. Telalian** (Greece), introducing draft resolution A/C.6/63/L.10 on criminal accountability of United Nations officials and experts on mission on behalf of the Bureau, said that the draft resolution had been considered both in informal consultations and by the Working Group on Criminal Accountability. It built on General Assembly resolution 62/63 by incorporating additional elements intended to enhance international cooperation. It laid down some general principles in that regard without seeking to create additional positive obligations that might have implications for the Organization's activities.

2. The fourth paragraph of the preamble was new and recognized the valuable contribution of United Nations officials and experts on mission towards the fulfilment of the principles and purposes of the Charter. The ninth and tenth preambular paragraphs, which were also new, reaffirmed the need to preserve the image, credibility and integrity of the United Nations and emphasized the detrimental effect of crimes committed by United Nations officials and experts on mission on the fulfilment of the Organization's mandate. In the eleventh preambular paragraph, reference was made to General Assembly resolution 62/214 on the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel. A new twelfth paragraph had been added to the preamble in order to emphasize the need to enhance international cooperation to ensure the criminal accountability of United Nations officials and experts on mission. Lastly, the penultimate preambular paragraph recalled resolution 62/63, and in the last preambular paragraph a reference to the interest of justice had been added.

3. In the operative part of the draft resolution, paragraph 5, which was new, encouraged States to afford each other assistance in connection with criminal investigations and criminal or extradition proceedings; to explore ways and means of facilitating

the possible use of information and material obtained from the United Nations; to provide effective protection for victims, witnesses and others who provided information in relation to a serious crime; and to explore ways and means of responding adequately to requests by host States in relation to capacity-building. Paragraph 8 stated that the consideration of the report of the Group of Legal Experts, in particular its legal aspects, would be continued at the sixty-fourth session of the General Assembly within the framework of a working group of the Sixth Committee.

4. Paragraph 10, which was new, requested the United Nations to consider any appropriate measures that might facilitate the possible use of information and material for purposes of criminal proceedings initiated by States, bearing in mind due process considerations. Paragraph 11 was also new and related to appropriate measures for the restoration of the credibility and reputation of United Nations officials and experts on mission when allegations against them were determined by a United Nations administrative investigation to be unfounded. Paragraph 12 related to the provision of information and material, while paragraph 13 emphasized the need to avoid retaliation against United Nations officials and experts on mission who reported allegations.

5. In paragraph 14, the Assembly took note with appreciation of the information provided in response to resolution 62/63, and in paragraphs 15 and 16 it requested the Secretary-General to report on the implementation of the draft resolution at the sixty-fourth session and indicated what information the report should include. Lastly, in paragraph 17, it decided to include the item entitled "Criminal accountability of United Nations officials and experts on mission" in the provisional agenda of its sixty-fourth session.

6. She was grateful to delegations for their constructive participation in the negotiation of the draft resolution and their spirit of compromise and hoped that the draft resolution could be adopted without a vote.

Agenda item 75: Report of the International Law Commission on the work of its sixtieth session *(continued)* (A/63/10)

7. **Ms. Ioannou** (Cyprus), speaking on the topic "Effects of armed conflicts on treaties", said that her

delegation supported the general thrust and logic of the draft articles adopted on first reading by the Commission at its sixtieth session, which reflected the principle of continuity of treaties during an armed conflict and the need to safeguard legal order and stability regardless of such hostilities. In that regard, she endorsed the thrust of draft article 9, preserving the duty of a State to fulfil its obligations under international law independently of a treaty, and the inclusion, in article 2, of both international and non-international conflict. The codification exercise must be as comprehensive and far-reaching as possible, considering that traditional inter-State conflict had been largely replaced by other types of conflict.

8. Furthermore, she supported the provision, in article 13, for the suspension of a treaty if it was incompatible with a State's right to self-defence and believed that the scope of application of the article should also extend to situations in which the State concerned intended to terminate or withdraw from the treaty. Another factor inducing susceptibility to termination, withdrawal or suspension of a treaty was the material breach of the treaty by one of the belligerent parties.

9. Her delegation agreed that, as set out in article 15, the aggressor State should not terminate, withdraw from or suspend the operation of a treaty as a consequence of an armed conflict if the effect would be to the benefit of that State. Considering it to be non-exhaustive, she supported the list of treaty categories that could not be affected by armed conflict. Two areas of the draft articles, however, required clarification: first, the effects of armed conflict on treaty relations among belligerent States as differentiated from treaty relations between belligerent and non-belligerent States, and second, the mechanism for the resumption of operation of suspended treaties. The possibility of interruption of treaty relations with third States would merit more careful consideration.

10. **Ms. Belliard** (France) said that the Commission should continue to focus on the substance of customary international law and the codification of that law rather than on relative normativity or the exclusively theoretical study of matters that were not ripe for codification. She welcomed the productive discussions that had taken place as part of the commemoration of the Commission's sixtieth anniversary and hoped that further such exchanges would be held in the future.

11. She also welcomed the Commission's adoption on second reading of the draft articles on the law of transboundary aquifers and endorsed the two-step approach for follow-up recommended by the Commission. Given the highly technical nature of the topic and the underlying scientific issues, the draft articles should be reviewed in depth by Member States so that the General Assembly could assess at a later stage whether the elaboration of a general convention would be appropriate. She paid tribute to the Commission for its adoption on first reading of the draft articles on the effects of armed conflicts on treaties, on which her delegation would be providing detailed written observations.

12. With regard to the topic of immunity of State officials from foreign criminal jurisdiction, codification efforts were useful because of the existence of a large body of customary law and the need for legal certainty. Her delegation endorsed the Special Rapporteur's view of the scope of the topic, as set out in his preliminary report (A/CN.4/601). All State officials should be included, although the most senior State officials should be dealt with separately. The Commission's work would be much less relevant if it were restricted to Heads of State and Government and ministers for foreign affairs. Furthermore, the immunities of diplomatic agents, consular officials, members of special missions and representatives of States in and to international organizations fell outside the scope of the topic. The question of family members of State officials should not be addressed either, since family members did not have immunities under customary international law.

13. The topic should be limited to the immunity of State officials from foreign criminal jurisdiction. The question of immunity from the jurisdiction of the State of nationality of the official in question was a matter solely for that State. Immunity before international criminal tribunals should also be excluded from the scope of the topic, since such tribunals had their own rules regarding immunities. Lastly, the Commission should review the immunities enjoyed not only by incumbent officials but also by former officials.

14. Recent developments regarding universal or quasi-universal jurisdiction were one reason for the relevance of the issue of immunity of State officials. However, they were not the only reason. In the case of offences committed abroad, a State might be recognized as having criminal jurisdiction on other

grounds, in particular the victim's nationality. However, it was crucial that there should be no confusion between universal jurisdiction and immunity. As the International Court of Justice had noted in the *Arrest Warrant* case, rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities: jurisdiction did not imply absence of immunity, while absence of immunity did not imply jurisdiction. The Commission should keep that distinction in mind when reviewing the question of possible exceptions to immunity in customary international law.

15. The distinction between immunity *ratione personae* and immunity *ratione materiae* was key, not only with regard to the basis of immunity, which was mainly functional, but also with regard to the scope of immunities that an official might claim depending on his or her rank in the State. That distinction must be upheld and refined. The Commission should examine the criteria for determining which officials could receive immunity *ratione personae*, especially in the light of the judgments of the International Court of Justice.

16. Lastly, her delegation expressed interest in any review by the Commission of the effect of immunity in the pretrial phase and considered that the question of the inviolability of State officials should be included in the scope of the study, given the close links between the concepts of inviolability and immunity.

17. With regard to the topic of expulsion of aliens, the two issues addressed in 2008 had somewhat distracted the Commission from the essence of the subject. On the first issue, namely the expulsion of persons having dual or multiple nationality, such persons should not be treated differently from other nationals. Consequently, the principle of non-expulsion of nationals must apply to individuals with one or more other nationalities. A separate draft article on that point was not necessary, as the issue could be clarified in the commentary to draft article 4. With regard to the second issue, that of loss of nationality and denationalization in relation to expulsion, she agreed with the Special Rapporteur's view that there were no grounds for elaborating a specific draft article. It would be sufficient to refer in the commentaries to the rules on nationality, while taking account of the fact that questions of loss of nationality or denationalization arose independently of the possible future expulsion of the person concerned.

18. With regard to the topic of reservations to treaties, the Commission's adoption of a large number of draft guidelines would undoubtedly help to make the Guide to Practice an exhaustive document. As to the specific issues on which the Commission was seeking the views of Governments, a distinction should be drawn between the legal effect of interpretative declarations and that of reservations, and that distinction should be borne in mind when considering the question of reactions to declarations and reservations and their respective effects. The system of reservations, acceptances and objections was subject to the rules of treaty law, whose legal technicality was illustrated by the Commission's current work. The same was not entirely true of interpretative declarations and reactions to them, which sometimes formed part of a broader context than the single treaty to which they related and touched on the way in which States interpreted their rights and obligations in international law. Her delegation therefore supported the Special Rapporteur's cautiousness about undertaking a study of the general theory of acquiescence for the purposes of the current draft. Similarly, in-depth consideration of the analogy between approval of an interpretative declaration and agreement between the parties regarding the interpretation of the treaty would go far beyond what was necessary for a draft text on reservations to treaties.

19. Nonetheless, it was valid to distinguish between different types of reaction, namely approval, disapproval, silence and reclassification, although the effects of each raised different problems. There were circumstances in which silence in response to an interpretative declaration could be construed as acquiescence. However, as stated in draft guidelines 2.9.8 and 2.9.9, acceptance of an interpretative declaration could not be presumed and could not be inferred from mere silence. There were specific circumstances in which the silence or conduct of a State with a direct and substantial interest in the detail or clarification provided by the interpretative declaration of another contracting State would inevitably be taken into account for the purposes of interpretation of the treaty, for example, in the event of a dispute between two contracting States. However, silence, when it did not constitute acquiescence to an interpretative declaration, could not play a role in the legal effects that the declaration could produce. In any case, the option open to contracting States to clarify or

specify the meaning of a treaty or of certain provisions thereof should not be ignored.

20. Lastly, with regard to the consequences of an interpretative declaration for a State which expressly approved or opposed it, a general reference to customary rules on the interpretation of treaties should be sufficient. Generally speaking, reactions to interpretative declarations could not be straitjacketed in formal or substantive rules. Except in cases where one or several other contracting States reclassified an interpretative declaration as a reservation, which shifted the debate to the field of the effects of reservations, there was an inherent flexibility in the system of interpretative declarations and the reactions that they produced, in accordance with the essential role played in the life of a treaty by the intention of the parties and their interpretation of the treaty.

21. Her delegation was interested in the Commission's recent work on treaties over time, especially the question of subsequent agreement and practice. It would be particularly useful to specify the characteristics of the customary rule on the interpretation of treaties which was codified in article 31, paragraph 3 (a) and (b), of the 1969 Vienna Convention. It was important to identify accurately the processes which could bring about change in written international law, particularly with regard to considerations other than the agreement or practice of the parties that were sometimes taken into account for the purpose of evolutive treaty interpretation.

22. **Mr. Tavares** (Portugal) said, with regard to new topics, that his delegation still had doubts as to whether the "most-favoured-nation clause" was an appropriate choice, but welcomed the inclusion of the topic "treaties over time". Other topics, such as *jus cogens*, were also of great importance for the consolidation of international law.

23. He welcomed the efforts undertaken to make the Commission's report more user-friendly and appreciated recent initiatives to revitalize the debate on the Commission's work, such as the meeting held in Geneva as part of the Commission's sixtieth anniversary celebrations and the interactive dialogues and informal meetings of legal advisers held during sessions of the General Assembly. However, further measures should be taken to enhance interaction between the Commission and Governments. For example, the interventions of Governments in the Sixth

Committee should be made available to Commission members, in particular the Special Rapporteurs, and access to Commission documents should be improved. Further enhancement of the Commission's website would also be a welcome step. In order to achieve all those aims, active cooperation between the Commission and the Secretariat was essential.

24. Turning to the topic of shared natural resources, he said that the draft articles on the law of transboundary aquifers were well balanced and in line with contemporary international law. The final form of the draft articles should be an international framework convention. His delegation therefore welcomed the Commission's recommendation that the General Assembly should consider at a later stage the possibility of elaborating a convention. However, the Committee needed to decide what "at a later stage" meant, bearing in mind the need to stabilize regulation with regard to transboundary aquifers.

25. Lastly, given the clear similarities in legal and geological terms between groundwaters and oil and gas, and the relevance of the topic of oil and gas in contemporary international relations, his delegation encouraged the Commission to turn its attention to that topic.

26. With regard to the effects of armed conflicts on treaties, his delegation was pleased that most of its past concerns had been addressed in the draft articles. He particularly welcomed the fact that "intention" was no longer the predominant criterion for determining the susceptibility to termination or suspension of treaties; the exclusion of international organizations from the scope of the draft articles; the non-exhaustive nature of the list of categories of treaties that were not susceptible to termination or suspension in the event of an armed conflict; and the approach taken in draft articles 8 to 12. However, there were still some core issues that needed to be addressed. The scope of the topic should not be expanded to cover situations of internal armed conflict or situations in which only one party to the treaty was a party to an armed conflict, both of which were adequately addressed by the relevant provisions of the Vienna Convention on the Law of Treaties. In those situations, since only one State foresaw difficulties in complying with the treaty, the question to be addressed related to the difficulty or impossibility of performing the treaty. In the case of an ongoing conflict between parties to a treaty, the issue at

stake was the level of trust necessary for the normal execution of the treaty.

27. His delegation shared the view that an aggressor State could not be treated in the same way as a State exercising its right to self-defence for the purposes of establishing the lawfulness of conduct. However, the topic should remain within the framework of the law of treaties and should not deal with issues relating to the law of the use of force. In that regard, he was concerned about attempts to bind the draft articles to a definition of aggression, as in draft article 15. The Special Working Group of the Assembly of States Parties to the Rome Statute of the International Criminal Court on the Crime of Aggression was working on the definition of the term “crime of aggression”, and it was important to avoid having multiple definitions for different purposes. A cautious approach was therefore advisable.

28. His delegation would be submitting detailed comments on the draft articles in due course.

29. **Ms. Lijnzaad** (Netherlands) commended the Commission for the completion of the draft articles on the law of transboundary aquifers. The international regulation of the uses of shared natural resources was of the highest significance to her country, which shared many such resources with other States. She encouraged the Commission to continue its work on the topic.

30. She regretted, however, that most of the observations and comments of the Netherlands and other States had not been followed. In particular, the Netherlands had made comments on the obligation to discuss compensation if significant harm was caused, despite the exercise of due diligence; the obligation to refrain, upon request, from implementing or permitting the implementation of the planned activity during the course of consultations; and the obligation to provide scientific, technical, logistical and other cooperation to States experiencing an emergency. Notwithstanding those omissions, her delegation supported the two-step approach for consideration of the draft articles and stood ready to engage in negotiations on the adoption of a resolution on the topic during the current session of the Assembly.

31. During the previous Assembly session, her delegation had affirmed its recognition of the theoretical importance of the topic of the effects of armed conflicts on treaties; it remained unconvinced, however, of the need to address the topic, as recent

armed conflicts had apparently not led to great problems in respect of the law of treaties. Her delegation not only questioned the practical relevance of the draft articles, but also believed that it was necessary to reconsider whether the articles would really contribute to the promotion of security and stability in legal relations between subjects of international law.

32. She was concerned about the scope of the proposed new topic, “treaties over time”. It would be difficult to finish such an ambitious and broad plan in the current quinquennium. She urged the Commission to reconsider the scope of the project and to strive for results of a practical nature. The project would also be undesirable if it led to a reconsideration of the existing law of treaties. Apart from situations in which a treaty was concluded for a limited amount of time, the intention of the parties to a treaty would be that it would last indefinitely. Furthermore, the understanding was that a treaty would be in force, and would necessarily continue to exist, despite changing circumstances, developing interpretations or subsequent practice.

33. The notions of subsequent practice and subsequent agreement seemed to be used almost as synonyms in much of the text. It was necessary, however, to distinguish between subsequent practice, where the issue was that practice was often not readily accessible and did not develop in an organized and conscious manner, and subsequent agreement, which implied that decisions had been taken to deliberately develop the law. The two notions needed to be addressed separately.

34. She called for caution when dealing with the “most-favoured-nation clause”, which might require broader analysis. The understanding of the clause was not only a matter of international law but also of the more specialized field of international economic law. Moreover, as most of the relevant case law was confidential, the availability of material for the proposed research might be limited.

35. **Mr. Ehrenkrona** (Sweden), speaking on behalf of the Nordic countries with regard to reservations to treaties, said that the Nordic countries supported the general notion of thoroughly considering interpretative declarations and reactions to them in conjunction with the consideration of reservations. The use of interpretative declarations was widespread, and in all

too many cases they caused difficulties because of their similarity to reservations. A guide to practice on reservations would not be complete without also elaborating on the use of interpretative declarations.

36. Caution should be exercised, however, in approaching the topic. The existing rules of the 1969 Vienna Convention on the Law of Treaties must be given full effect. According to article 2 of that Convention, a reservation was a unilateral statement, however phrased or named, made by a State whereby it purported to exclude or to modify the legal effect of certain provisions of a treaty; the key wording was “however phrased or named”. An interpretative declaration was in fact a “reservation in disguise” and must be treated as a reservation and not as a new category. The word “reclassification” created grounds for misinterpretation and risked giving the impression that, at some point, the “reservation in disguise” could have been, or was in fact, an interpretative declaration until it was “reclassified”. The real intent should be to “interpret” the interpretative declaration and decide whether or not it purported to exclude or modify the legal effect of the treaty’s provisions. Once the conclusion had been drawn that a “true” interpretative declaration had been made, States had the opportunity to react, but action was not compulsory. On the other hand, if the declaration constituted a reservation, States were obliged to act if they wished to express an objection. If the reservation was incompatible with the object and purpose of the treaty, the reservation had no legal effect, even without an objection.

37. The practice of severing invalid reservations from the treaty relation between the States concerned was well in accordance with article 19 of the Vienna Convention. The option of severability secured bilateral treaty relations and opened up the possibility of dialogue within the treaty regime.

38. With regard to conditional interpretative declarations, the Nordic countries agreed with the notion contained in draft guideline 1.2.1 that they did, to a large extent, resemble reservations and therefore often had to be treated as such. Conditional interpretative declarations differed, however, in that they could be considered as interpretative declarations if the interpretation contained therein was acceptable.

39. In the case of a “true” interpretative declaration, draft guideline 2.9.8 was a prudent inclusion, as it stated the obvious fact that neither approval of nor

opposition to an interpretative declaration should be presumed. True interpretative declarations could not be given any other relevance than that which the rules governing the interpretation of treaties might give them. As stated in the first paragraph of draft guideline 2.9.9, consent to an interpretative declaration should not be inferred from the mere silence of a State in response to an interpretative declaration formulated by another State in respect of a treaty. Furthermore, it was not helpful to try to create a separate regime where acquiescence could play a specific role in regard to interpretative declarations. As approval of an interpretative declaration constituted subsequent agreement on the interpretation, in accordance with article 31, paragraph 3 (a), of the 1969 Vienna Convention, the general rules governing how an agreement could be entered into were sufficient.

40. In brief, the difference between a reservation and an interpretative declaration lay mainly in the meaning attributed to silence. Silence against a reservation constituted acceptance, with the sole exception of reservations that ran counter to the object and purpose of the treaty, while silence against an interpretative declaration could never give rise to any legal effects beyond those contained in the existing rules of interpretation of treaties.

41. **Ms. Defensor-Santiago** (Philippines) said that her comments on the Guide to Practice on reservations to treaties would focus on guideline 2.1.9, on statement of reasons (A/63/10, para. 124). The guideline could be interpreted as meaning that if a party to a treaty chose the option of making a reservation, it would have to undergo the “pain” of giving the reason. It was likely, however, that the State or international organization would do its best to avoid the “pain” and would choose not to be encouraged by the guideline. Consequently, the Commission’s commentary to the effect that the guideline did not make it difficult to formulate reservations was not very realistic.

42. A wide scope of freedom, which amounted to an exercise of sovereignty in determining the parties’ legal relations by means of reservations, was implied in article 2, paragraph 1 (d), of the Vienna Conventions of 1969 and 1986, whereby a reservation was defined as being unilaterally phrased or named and as reflecting the intention of the reserving party. It was open to question whether that condition was met if a party to a treaty formulated a reservation under the directive of a

guideline (draft guideline 2.1.9) by which it was required to indicate a reason for doing so.

43. Referring to chapter III, on countermeasures, of the report of the Special Rapporteur on responsibility of international organizations (A/CN.4/597), she suggested that the Commission should, as far as possible, treat the nature and limits of countermeasures as being governed by the constituent instrument of the international organization and that draft articles on that subject should be applied as residual rules. That mechanism would ensure respect for the organization's independence and separate personality. States would also have the opportunity, at the earliest formative stage, to decide on matters concerning countermeasures in keeping with the nature of the international organization as determined by the negotiating State.

44. The significance of the draft article on obligations not affected by countermeasures lay in the individual identification as to which norms in general international law were categorized as peremptory or *jus cogens* norms. The concept of *jus cogens* had broader implications than those of articles 53 and 64 of the 1969 Vienna Convention, which limited the function of a peremptory norm to the consequence that a treaty would become void and would terminate if it conflicted with such a norm.

45. The Commission's commentary explaining draft article 46 (A/63/10, para. 165) did not appear to include the case where the obligation breached by an international organization was owed to the "international community as a whole", in other words, the case of *erga omnes* obligations. The draft article provided an approach to *locus standi* through the introduction of the category of "specially affected" State or international organization. Owing to the nature of such obligations as *erga omnes*, the prospect of a multiplicity of suits brought by specially affected (injured) States deserved attention. Her delegation wondered how the interests of States or organizations that were not specially affected would be dealt with in the invocation of responsibility of an international organization under draft article 46 (b) (i).

46. **Mr. Popkov** (Belarus) said that his delegation looked forward to the speedy conclusion of the Commission's work on the draft Guide to Practice, which would be most useful in establishing the appropriate use by States of reservations and

interpretative declarations. The Special Rapporteur and the Commission rightly wished to produce a balanced document that would reconcile the various approaches to the codification of reservations and interpretative declarations and also serve as a means of the progressive development of the international law of treaties. The close working relationship between the Commission and the Committee was illustrated by the fact that the draft Guide had, over the past few years, been extensively revised in response to comments by delegations.

47. His delegation generally supported the considered and limited use by States of reservations to treaties. If overused, however, reservations could undermine the integrity and stability of international treaty relations. His delegation was therefore very wary of creating a precedent for the widespread use of reservations and amendments, directly or indirectly, to the basic provisions of the Vienna Convention on the Law of Treaties. The Guide to Practice should not be seen to be encouraging the use of reservations by individual States for their own national interests to the detriment of major international agreements.

48. At previous sessions of the General Assembly, his delegation had expressed its views on the so-called late formulation of a reservation, on the procedure whereby the depositary reacted to a reservation that was incompatible with the object and purpose of the treaty and on other new practices. Some doubts had been expressed as to whether the provisions on those topics in the Guide to Practice were consistent with the Vienna Convention, but there was nothing revolutionary about them. They could, however, encourage the development of new international customary law and prevent the emergence of undesirable trends in international treaty relations.

49. The draft Guide to Practice should indicate the international law basis for the practice of unilateral interpretative declarations by establishing the connection between interpretative declarations and articles 31 and 32 of the Vienna Convention. Interpretative declarations could be considered a basic means of achieving agreement on the interpretation of a given provision. The Guide should make a clear distinction between reservations and interpretative declarations. His delegation therefore had serious doubts concerning the proposal to create two categories of interpretative declaration, "simple" and "conditional". Conditional interpretative declarations

were surely, to all intents and purposes, reservations, from the legal point of view. The very use of the word “conditional” indicated that a State made its agreement to be bound by a given treaty dependent on a reservation that other States were obliged to accept. Interpretative declarations should rather be seen as a practical way of eliminating ambiguities or obscurities from a treaty or bringing it into line with domestic legislation.

50. His delegation shared the view that the reservations regime should apply also to conditional interpretative declarations. An official endorsement in the Guide to Practice of the use of conditional interpretative declarations could encourage the use of “disguised” reservations formulated as conditional interpretative declarations. Such a practice might give rise to disputes and have negative consequences for the integrity both of multilateral treaties, to which reservations were not permitted, and of bilateral treaties, to which not all States acknowledged the admissibility of reservations.

51. With regard to the means of expressing approval of an interpretative declaration, his delegation considered that it would be incorrect simply to adopt wholesale the procedure provided for in the Vienna Convention. Mere silence unaccompanied by the corresponding conduct in accordance with article 45 of the Convention was an insufficient basis on which to establish whether a State wished to approve an interpretative declaration. The Commission should draw up specific criteria indicating approval, perhaps consisting of three features simultaneously displayed: silence, conduct and the lapse of a reasonable length of time.

52. The question of the consequences of interpretative declarations should be considered in the light of the principle of estoppel, which made for honesty and responsibility in international legal relations. A State that had made an interpretative declaration should not be able subsequently, without the agreement of other States or international organizations that had approved the proposed interpretation, to renounce or change its declaration. States or international organizations that had consented to an interpretative declaration should not be able to invalidate that declaration as the result of a subsequent agreement between them and the formulator of an interpretative declaration.

53. The expression of a reasoned objection to an interpretative declaration should be centred on the entry into force and implementation of the provisions in relation to which the interpretative declaration had been made rather than on the declaration itself. By their nature, interpretative declarations had no legal effect and it therefore made no sense to treat the consequences of an objection to a declaration as being similar to the consequences of an objection to a reservation. Unjustified objections, which could be dictated by purely political considerations, should not be seen as acts giving rise to legal consequences. His delegation hoped that the Commission would complete its work on reservations to treaties in close cooperation with Member States, taking full account of international practice and the ways that it might be affected by the Guide to Practice.

54. With regard to the topic of responsibility of international organizations, he felt that the Commission’s work contributed greatly to the development of the concept of international responsibility and the strengthening of the international legal basis of the activities of international organizations. Many of the international legal rules on the responsibility of States were applicable to the responsibility of international organizations. However, the responsibility of international organizations had specific characteristics owing to the particular legal nature of such organizations. Overall, the draft articles prepared by the Commission took those characteristics into account satisfactorily. However, there remained some shortcomings, which had been the subject of critical comments at previous sessions by a number of delegations, including his own. He hoped that the Special Rapporteur would pay due attention to those comments in his seventh report and would propose amendments to the draft articles relating to the basis of responsibility, circumstances precluding responsibility, the responsibility of an international organization in connection with the act of a State or another international organization, and other issues.

55. An international organization could bear responsibility for wrongful acts and bring claims in connection with damage caused to it by States or other international organizations. Those two aspects of the responsibility of international organizations should be taken into account fully in the elaboration of the draft articles on the implementation of responsibility.

56. It was regrettable that the draft articles did not address the question of resort to countermeasures by an injured international organization against a State that had committed a wrongful act. The issue was not straightforward, since it required a distinction to be drawn between countermeasures taken by an international organization in connection with direct damage caused to it and sanctions that might be imposed within the competence of the international organization. However, the absence of relevant draft articles left a gap in the law of international responsibility and might be interpreted as a restriction of the rights of international organizations possessing international legal personality to bring claims in the event of damage caused to them.

57. His delegation shared the view that the relationship between an international organization and its members with regard to countermeasures should be treated differently from the relationship between an international organization and injured States that were not members of the organization. However, the fact that the draft articles provided for resort to countermeasures only if that was not inconsistent with the rules of the organization in question significantly limited the possibility for member States, on the one hand, to respond to the failure of an international organization to comply with its obligations under its statutes and other international legal instruments and, on the other, to obtain adequate compensation for damage caused.

58. More stringent requirements should be established with respect to the proportionality of countermeasures taken by member States against an international organization. Resort to countermeasures by member States should not hamper the exercise of the functional competence of the international organization for the benefit of the general social, humanitarian and other interests of members which were not connected with the wrongful acts of the organization. Countermeasures by member States that might undermine or paralyse the activities of the organization should be prohibited.

59. The draft article on the object and limits of countermeasures should specify clearly the procedure for resort to countermeasures, since in practice a situation could arise in which countermeasures not only damaged the rights and interests of the organization that had committed the internationally wrongful act, but also affected the interests of member

States of the organization. Moreover, the benefit of international cooperation would be denied both to States that had contributed to the commission of the internationally wrongful act by the organization and to States that had actively opposed the commission of the act. The Commission should consider in greater detail ways of protecting the rights of States that had not supported the commission of the wrongful act.

60. The Commission should reassess all the consequences of recognizing an international organization's right to invoke responsibility in the event of a breach of an obligation owed to the international community as a whole. International legal norms relating to the possibility of invoking responsibility for a breach of such an obligation were still at an early stage of development and were connected primarily with the implementation of the responsibility of States. The right to invoke responsibility for a breach of an obligation owed to the international community could not be granted to all international organizations but only to those with near-universal membership and a global sphere of activity, which could consequently claim to be protecting the interests of the entire international community. There were no grounds for granting such a right to regional organizations, since their functions should not extend too far beyond addressing regional problems and protecting the direct interests of their member States.

61. **Mr. You Ki-Jun** (Republic of Korea), referring to reservations to treaties, said that his delegation supported the consensus in the Commission not to deviate from the relevant provisions of the 1969, 1978 and 1986 Vienna Conventions and wished to emphasize that the Guide to Practice should avoid an excess of new terms that were unknown when those conventions were concluded.

62. The Commission should re-evaluate its 2001 decision and consider whether to keep the guidelines on conditional interpretative declarations intact, rather than replacing them by a single guideline assimilating such declarations to reservations. Draft guideline 2.1.9 provided that a reservation should to the extent possible indicate the reasons why it was being made; however, article 19 of the 1969 Vienna Convention on the Law of Treaties did not require such reasons. Draft guideline 2.6.5 provided for an objection by any State and any international organization that was entitled to become a party to the treaty, whereas article 20 of the 1969 Vienna Convention referred simply to "another

contracting State”. Draft guideline 2.9.3 defined “reclassification”, which, according to the Special Rapporteur, was merely one of the four sorts of reactions to interpretative declarations; however, his delegation considered that it might be unwise to introduce non-conventional terms into the Guide to Practice, because the Commission could be actually rewriting the Vienna Convention regime.

63. Reservations, for better or worse, were necessary to secure the participation of many States in treaty regimes, and it would be counterproductive to adopt overly restrictive limits on them. A balance should be sought between broad participation of States in multilateral treaties and the maintenance of unity in treaty regimes.

64. Successful completion of work on the topic of responsibility of international organizations would be reminiscent of the Commission’s accomplishments with regard to the Vienna Convention on the Law of Treaties. The responsibility of international organizations and State responsibility were the two pillars of international responsibility for internationally wrongful acts, and his delegation believed that such responsibility should be determined under a system that was basically uniform, comparable to the relationship between inter-State treaties and treaties between States and international organizations or between international organizations. Although there could be certain inherent differences between States and international organizations, limiting countermeasures in the case of international organizations to “withholding the performance of contractual obligations under treaty relationships involving that organization” was one matter, whereas completely denying countermeasures to international organizations was another.

65. With respect to expulsion of aliens, his delegation emphasized that the absolute prohibition of the expulsion of its own nationals by a State was a well-established international legal principle supported by a number of international human rights instruments; it therefore considered that the Commission should focus on the expulsion of aliens rather than on issues of nationality or denationalization.

66. **Mr. Duan Jielong** (China), referring to the topic of reservations to treaties, said that draft guideline 2.6.5 (“Author”) stated that an objection to a reservation could be made by two categories of

entities: the contracting State or international organization, and any State or international organization that was entitled to become a party to the treaty. While his delegation had no objection to the former category, it had some doubts concerning the right of the latter to formulate objections before becoming a contracting party, given that such a declaration did not produce any legal effect before a State or international organization consented to be bound by the treaty; the draft guidelines did not necessarily have to provide for an act that had no legal effect. Furthermore, recognizing the right of a State or international organization to object to a reservation made by a contracting State before the latter became a party to a treaty would raise some legal issues, such as whether the State or international organization making the objection was obliged to notify it to the treaty depositary in accordance with the treaty provisions, and whether the treaty depositary was obliged to circulate such an objection to the contracting parties.

67. In general, his delegation was satisfied with the draft guidelines on interpretative declarations; nevertheless, the second paragraph of draft guideline 2.9.9 could be improved. First, its relationship to draft guideline 2.9.8 required further clarification, since the latter provided for non-presumption of approval of, or opposition to, an interpretative declaration, yet the former obviously had the effect of making presumptions about an interpretative declaration. Second, he questioned whether there was any basis in State practice for silence to be presumed to be acquiescence and, if so, under what circumstances it would be deemed appropriate to make such a presumption and what factors should be taken into account.

68. The eight draft articles adopted by the Commission with regard to responsibility of international organizations basically followed, by analogy, the wording of the corresponding provisions on State responsibility, supported by the views and practice of a few international organizations, such as the European Union. That approach had its merits, since some rules applicable to one situation could be applied to a similar one *mutatis mutandis*, and there were numerous similarities between State responsibility and responsibility of international organizations. However, extension by analogy could be applied to the responsibility of international organizations only under similar circumstances. It was

inappropriate to extend the rules in the draft articles on State responsibility that were controversial and unsupported by international practice to the responsibility of international organizations. Moreover, the question of the responsibility of States and other subjects of international law was related to the implementation of international law and, as such, could prejudice the right of the subjects of international law. Consequently, the Commission should be more cautious when resorting to extension, by analogy, of the draft articles on State responsibility.

69. On the question of how to invoke responsibility when there was a plurality of responsible States and international organizations, the second paragraph of draft article 51 provided for an order of invocation by an injured State or international organization, differentiating the “primary responsibility” of the responsible international organization, and the “subsidiary responsibility” of the members of that organization. His delegation found that such an order of invocation was inappropriate for a general rule. At the very least, in all cases covered by articles 25 to 28, an injured State or international organization should have the right to decide the order in which it invoked the responsibility of the responsible State or international organization.

70. Draft article 52 concerned the invocation of responsibility by a State or an international organization other than an injured State or organization, and his delegation believed that it was pertinent to the question of countermeasures. If a third State or international organization had the right to invoke responsibility, the question arose of whether it also had the right to take countermeasures. Therefore, the draft article should be considered together with the draft articles on countermeasures, which the Commission had considered but had not yet adopted. There was no established practice concerning invocation of responsibility of international organizations by a third State or international organization, and much controversy surrounded such an approach, even in the draft articles on State responsibility.

71. On the question of whether an international organization was entitled to take countermeasures and whether such measures could be taken against an international organization, or even whether the draft articles should contain provisions for countermeasures at all, his delegation considered that providing for

countermeasures under the responsibility of international organizations was problematic. International organizations differed from States, in that they represented a certain degree of convergence of States as independent subjects in a decentralized world, whereas countermeasures were intended mainly for an unorganized and loosely connected international community. Introducing the concept of countermeasures into the regime governing the responsibility of international organizations conflicted with the function performed by international organizations of coordinating the international community. Consequently, the Commission should be extremely cautious in introducing countermeasures.

72. **Ms. Ruiz Cerutti** (Argentina) said that, during its sixtieth session, the Commission had made significant progress in its work on interpretative declarations, a topic on which the Vienna Conventions of 1969, 1978 and 1986 were silent, and which was particularly important in the case of treaties that prohibited the formulation of reservations. In general, Argentina agreed with the contents of the proposed draft guidelines and shared the chosen approach of not transferring provisions that were applicable to reservations to interpretative declarations, even though the absence of literature and the scarcity of practice concerning the latter could have led to seeking solutions inspired by the legal regime of reservations.

73. In particular, Argentina concurred with the proposed text defining opposition to an interpretative declaration included in draft guideline 2.9.2, whereby a State did not have to limit itself to merely rejecting the interpretation proposed in the interpretative declaration, but could propose another interpretation. Argentina also considered that draft guideline 2.9.3 encompassed a fundamental aspect of opposition to interpretative declarations, by granting States the possibility of reclassifying interpretative declarations made by others when such declarations could be considered “disguised reservations”, owing to their intended legal effects. It was extremely important to take the said draft guideline into account when examining interpretative guidelines formulated with regard to treaties that did not expressly allow or prohibit the formulation of reservations, such as those relating to the protection of persons; in that regard, the second paragraph of the draft guideline, providing that, in formulating a reclassification, States and international organizations should take into account

draft guidelines 1.3 to 1.3.3, was essential. Her delegation also considered that the wording of draft guideline 2.9.4 adequately reflected the ability of a State to react at any time to an interpretative declaration, even before the entry into force for the author of the approval, opposition or reclassification of the treaty to which it was formulated.

74. Her delegation considered especially relevant the approach to the non-presumption of approval or opposition to an interpretative declaration expressed in draft guideline 2.9.8, because it reflected a specific trait that distinguished interpretative declarations from reservations, in that States were not obliged to react to the former. The same position was correctly reflected in the first paragraph of draft guideline 2.9.9. Nevertheless, her delegation agreed with the Special Rapporteur that the principle should be considered flexibly, as reflected in the second paragraph of the draft guideline, although it might be necessary to find a more precise definition of what was understood by “certain specific circumstances” to avoid misunderstandings in the application of the draft guideline. Regarding draft guideline 2.9.10 concerning reactions to conditional interpretative declarations, She agreed with the provisional nature of the wording, because it was premature to rule on whether that type of declaration, from the point a view of its legal nature, constituted an interpretative declaration or a reservation. Despite the foregoing, it should be recalled that, irrespective of what it was called, the said distinction should always be based on whether or not the purpose was to modify the legal effects of the treaty provisions.

75. On the topic of responsibility of international organizations, she appreciated that the sixth report of the Special Rapporteur (A/CN.4/597) followed the general pattern of the articles on the responsibility of States for internationally wrongful acts. Most international literature recognized that the norms governing State responsibility could be applied to international organizations, provided that the necessary modifications were made. In that regard, she drew attention to the 1996 report of the Secretary-General on administrative and budgetary aspects of the financing of the United Nations peacekeeping operations (A/51/389). Furthermore, the general and flexible nature of the draft articles meant that they could be adapted to a wide variety of international organizations.

76. Her delegation supported the provisions of the articles on invocation of responsibility by an injured State or international organization, notice of claim by an injured State or international organization and admissibility of claims, which replicated, in general, the corresponding provisions on State responsibility. In particular, she agreed that any applicable rule relating to nationality of claims should be respected, and that there was a need to exhaust all effective and available remedies provided by the organization against which the claim is made, when a rule requiring the exhaustion of local remedies applied to a claim. The flexibility of the wording of the latter provision allowed it to be adapted to different types of organizations.

77. Regarding the loss of the right to invoke responsibility, her delegation understood that, although the provisions of the draft articles on State responsibility were applicable to the responsibility of international organizations in respect of the organ of the international organization that was competent to waive the claim, the rules of the organization itself should be taken into consideration.

78. Her delegation concurred with the formulation of draft articles 50 and 51, which were aligned with the corresponding articles on State responsibility. In the case of draft article 51, it was important to take into account the basic principle that an organization had a distinct and separate legal personality from that of its members and, consequently, an eventual concurrent or subsidiary responsibility of the State member would depend above all on the specific characteristics and rules of the organization. Her delegation supported, in general, draft article 52 on invocation of responsibility by an entity other than an injured State or international organization. However, a non-injured international organization could only claim the violation of an obligation that affected the international community as a whole when it had been entrusted with the function of protecting the interests of that international community. Moreover, the organization should have a universal vocation or a representative number of member States in order to legitimize its claim for the violation of an obligation that affected the international community as a whole.

79. The main focus of the Commission’s discussions on countermeasures, concerning the advisability of authorizing their adoption by injured States or international organizations against an international organization responsible for the violation of an

international obligation, was an issue that should be approached with great caution. Her delegation commended the efforts of the Working Group, which had reached the conclusion that the draft articles should regulate adequately the conditions and the limits of the recourse to such countermeasures, taking into account the particularities of international organizations.

80. **Mr. Witschel** (Germany) said, with regard to the questions contained in paragraph 26 of the report, that “simple” interpretative declarations, as the report called them, should not be treated as reservations, as defined in article 2 of the Vienna Convention on the Law of Treaties. In the absence of any explanation, however, it was difficult to know what meaning should be read into a State’s silence in response to an interpretative declaration; that was presumably the reason for the dearth of State practice. At any rate, silence could not be taken as a response that would make the declaration binding on the State concerned: States were under no obligation to react to interpretative declarations, nor could such declarations limit the rights of other parties. Silence did, however, have a legal effect in cases where, according to general State practice, a protest against the interpretation given would be expected from the State or international organization concerned. In such circumstances, a party that did not protest was treated as if it had consented. The judgment of the International Court of Justice in the *North Atlantic Coast Fisheries* case was particularly pertinent in that regard. As for the question in paragraph 26 (c), silence could not be described as a part of the legal effects of a declaration; it was rather a reaction to such a declaration and thus a prerequisite of any legal effects.

81. With regard to the consequences of an interpretative declaration for its author (para. 27 (a)), the author was, in his view, bound only once another party had come to rely on the declaration, for example by expressing its approval. If approval had not been expressly granted, the principle of estoppel might come into play. As for the consequences for a State or international organization that had approved the declaration (para. 27 (b)), the interpretation expressed in the declaration was, in his view, binding between a State or international organization that had approved the declaration and its author. The situation was analogous to that found in article 31, paragraph 3 (a), of the Vienna Convention.

82. With regard to the question concerning the consequences of an interpretative declaration for a State or organization that had expressed opposition to that declaration, such opposition might either restrict or exclude the intended legal consequences of the declaration, as stated in draft guideline 2.9.2. An unresolved dispute between a party and the author of a declaration, however, did not render the provision in question, or indeed the entire treaty, inapplicable between the two parties.

83. His responses to the previous questions had more or less covered the one contained in paragraph 28. It was worth adding, however, that the consent of all parties to an interpretative declaration was required, if the analogy with article 31, paragraph 3 (a), of the Vienna Convention was to apply. Such an agreement would have to be taken into account when a treaty was interpreted, provided that the reactions of the other parties allowed.

84. The Commission’s work on the international responsibility of international organizations undoubtedly benefited from its work on State responsibility. Although he endorsed the European Union’s statement, particularly its conclusion that the draft articles were satisfactory, he wished to comment on a number of issues. First, with regard to the invocation of the responsibility of international organizations, his delegation believed that, although a breach of international law by an international organization was conceivable only in limited circumstances, a rule such as that set out in draft article 52 was necessary for the overall coherence of the law on responsibility in general. It would, however, be unnecessary to apply it to all international organizations, regardless of their functions. Unlike States, international organizations did not have a general international legal personality but only functional competences related to their mandates. He therefore commended the Commission’s decision to stipulate that entitlement to invoke the responsibility of an international organization existed only if the functions of the international organization concerned included safeguarding the interests of the international community.

85. It did not seem to be frequent — or even established — practice for international organizations to resort to countermeasures in response to internationally wrongful acts by international organizations, apart from the World Trade

Organization. The option of taking countermeasures should, however, exist, since the ability of international organizations to fulfil their mandates would otherwise be diminished. At the same time, the use of countermeasures should be restricted, given the great number and variety of international organizations. Clear rules should be established as to when and under what conditions countermeasures might be taken by or against international organizations.

86. Measures taken by an international organization in accordance with its internal rules did not qualify as countermeasures; rather, they were a form of sanctions, governed by a specific set of rules, like those imposed by the Security Council. On the other hand, there was considerable practice — much of it involving the European Union — relating to countermeasures by an international organization against a non-member State, following breaches of *erga omnes* obligations under international law. That suggested in any case that the relationship between an international organization and its member States should be treated differently from that between the organization and non-member States, but better still would be to disallow countermeasures by international organizations against States altogether. The Special Rapporteur had rightly opted for the inclusion of special rules on countermeasures in the draft articles rather than a simple “without prejudice” clause. Otherwise, there would be no opportunity to state, as implied by the current wording of draft article 55, that, as a general rule, countermeasures had no place in the relations between an international organization and its members.

87. **Ms. von Wirén** (Estonia), referring to reservations to treaties, said that her delegation appreciated the Commission’s work on the Guide to Practice, especially guidelines 2.3 (Late reservations), 2.4 (Procedure for interpretative declarations) and 3.1 (Permissible reservations), as existing literature was contradictory and greater clarity would be welcomed. The draft Guide to Practice was already a valuable source for aspects that were either not regulated or insufficiently regulated in the Vienna Conventions. Nevertheless, her delegation had some legal concerns about late reservations. It believed that such reservations were not permissible under the Vienna Conventions, which provided that a reservation could be made only when signing, ratifying, accepting, approving or acceding to a treaty. However, her delegation was pleased that the Commission’s report

preserved the possibility of objecting to the late formulation of a reservation, with the consequence that the reservation would have no legal effect.

88. The Commission’s most recent work on reservations would bring clarity to the rules concerning interpretative declarations that were not addressed by the Vienna Conventions. The report also broached the topic of reclassification, which was often used in State practice, and guidelines on that subject would be greatly appreciated. Nevertheless, her delegation was not fully in agreement with the proposal put forward in draft guideline 2.9.4 that there should be no time limit for formulating a reclassification. In its practice, Estonia tended to apply the 12-month deadline, as in the case of objections to reservations. Furthermore, it had doubts whether qualifying declarations for the purpose of modifying the legal effects of a treaty (the so-called “conditional interpretative declarations”) as a subcategory of interpretative declarations could be justified. Interpretative declarations resembled reservations and therefore could rather be qualified as a subcategory of reservations, because their purpose was to clarify the meaning of some provisions of a treaty without having a legal effect on treaty relations, while the purpose of conditional interpretative declarations was to modify the legal effects of the treaty.

89. Lastly, her delegation believed that, for Member States, the legal effect of the objection was another important aspect of the topic of reservations to treaties. The rules set forth in the Vienna Conventions needed to be developed in the Guide to Practice to make it easier for States to achieve the desired effect of their objections. Her delegation considered that the legal effect that the States wished to achieve with their objection often differed from that described in the Vienna Conventions. State practice confirmed that opinion, since objections often included the expression “the convention will thus become operative between the two States without [the State] benefiting from the reservation”. There might even be a new rule of customary law modifying the rules set out in the Vienna Conventions, and it was appropriate that the Commission was taking that aspect into consideration.

90. **Mr. Dufek** (Czech Republic) commended draft articles 46 to 51 on the international responsibility of international organizations, which basically mirrored the corresponding articles in the draft articles on State responsibility. The practice of States and international organizations supported the view that an international

organization was entitled to invoke international responsibility in the same way as States.

91. As for draft article 52, however, which corresponded to article 48 of the draft articles on State responsibility, State practice was not very indicative and the literature seemed to be deeply divided. The only significant examples presented in the report related to the European Union, which was a rather exceptional organization of regional integration. The Commission should therefore focus on the codification of international law in areas where there was already extensive State practice, precedent and doctrine. As it stood, draft article 52 did not fully reflect the cardinal difference between States and international organizations, namely that the latter possessed only a functional and specialized legal personality. By the same token, a breach of international obligations should be seen in terms of an act *ultra vires*, in the sense that it was well outside the scope of the organization's competence. His delegation would reserve its position on the matter until the Special Rapporteur issued his seventh report, which should clarify a number of uncertainties with regard to a State's responsibility in connection with an act by an international organization.

92. In view of the limited State practice, great caution was required in considering countermeasures, particularly as the topic was reflected in draft article 52[51]. While an international organization might, resort to countermeasures under certain circumstances, such measures were elements of decentralized law enforcement that were inherent to inter-State relations. By way of countermeasures, an international organization should be permitted only to withhold the performance of contractual obligations under a treaty. As for so-called vertical relations — sanctions imposed by the Security Council or a regional organization — they involved a legal regime that depended essentially on the rules of the organization and might be different from the general regime of countermeasures under the articles on State responsibility. It would also be advisable to consider separately an international organization's relations with its members and with its non-members.

93. Turning to the topic of expulsion of aliens, he said that multiple nationality was becoming increasingly common. He therefore commended the Commission's decision to focus on the issue of expulsion of persons having dual or multiple

nationality. On the basis of State practice, the Special Rapporteur had concluded, in his fourth report (A/CN.4/594), that the principle of non-expulsion of nationals did not apply to persons with dual or multiple nationality, in cases where expulsion would not result in statelessness. His delegation did not share that view. Under Czech legislation, a person having both Czech and foreign nationality was regarded as a Czech national and his or her expulsion was therefore absolutely prohibited. Persons with dual or multiple nationality were, moreover, protected against expulsion from any State whose nationality they held. Admittedly, their expulsion was not expressly prohibited in any international treaty, but it was surely inadmissible under a number of human rights instruments. The draft articles should therefore emphasize that the prohibition of such expulsion was absolute, with no exceptions. Similarly, the Special Rapporteur stated in his report that a person's dominant or effective nationality was important in determining the legality of an expulsion. Again, however, the Czech Republic, advocating as it did the absolute prohibition of the expulsion of nationals, saw no need to ascertain a person's dominant or effective nationality in the face of expulsion. Nor did Czech legislation permit the denationalization of persons with dual or multiple nationality in preparation for expulsion, since that would infringe their human rights. Rather than protecting the State and its interests, the measure often served illegitimate ends, such as expropriation or discrimination against certain groups. Arbitrary denationalization was prohibited under both regional and universal human rights instruments.

94. **Mr. Astraldi** (Italy) said that not all the questions relating to reservations to treaties fully deserved the time devoted to them by the Commission. That applied particularly to interpretative declarations, which, although they gave rise to some interesting questions, could not be considered reservations and could well have been omitted from the current study of the topic.

95. Most of the draft guidelines in the Guide to Practice appeared acceptable. Draft guideline 2.6.13, however, was too rigid: a 12-month deadline for an objection seemed to imply presumption of the acceptance of a reservation where no objection had been made within 12 months. Such objections had often been made after the expiry of the 12-month period, as acknowledged by the Commission in its commentary on draft guideline 2.6.15. Draft guidelines

2.6.13 and 2.6.15 should reflect that practice rather than automatically making inadmissible reservations effective on the expiry of a 12-month period.

96. The draft articles on responsibility of international organizations were generally acceptable, with the addition of draft article 48 concerning the admissibility of claims. There seemed little justification for adopting a different approach for international organizations from that followed in the draft articles on State responsibility. The Commission should take that view into account in order to fill the lacuna left in draft article 19 on circumstances precluding wrongfulness.

97. With regard to the draft articles on countermeasures, he said that a distinction should be drawn between international organizations and States as to measures taken in response to the breach of an obligation owed to the international community as a whole. His delegation shared the view expressed in paragraph 140 of the report that such an organization should be entitled to take measures only if it had been given a mandate to protect the general interest underlying the obligation in question.

98. His delegation shared the view that the study on expulsion of aliens was not the appropriate vehicle for embarking on a discussion of the laws of nationality. It supported the Commission's view that a State could not lawfully expel a national, even if he or she also possessed a second nationality. Nor should the prohibition of the expulsion of nationals be circumvented by denationalizing an individual for the purpose of expelling him or her. It was an important rule that should be set out in a draft article.

The meeting rose at 6 p.m.