Document:-
**A/CN.4/2918**

# Summary record of the 2918th meeting

Topic:
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-
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potential addressees to formulate an objection. An objection formulated by a non-contracting State was, as it were, a "proposed objection", and he agreed with those members, including Ms. Escarameia, Ms. Xue, Mr. Saboia, Mr. Nolte and Mr. Vázquez-Bermúdez, who had said that such an objection would produce an effect only after the State in question had expressed its consent to be bound by the treaty concerned. Until that point, an objection could only be formulated, not made.

56. Accordingly, Mr. Fomba was surely right to have pointed out that the two categories of authors referred to in the draft guideline were not placed on an equal footing, and to have suggested highlighting the fact by replacing the word "and" between the two subparagraphs by the words "as well as" or "but also". Such an amendment could be considered, but, in his view, it would be out of place in the draft guideline. It might be better to deal with the point in the commentary.

57. With regard to draft guideline 2.6.6, Mr. Fomba had also asked whether similar objections formulated by several States could not be considered to be objections formulated jointly. In his opinion, the answer was definitely in the negative. Undoubtedly, there was a need to accept objections formulated jointly, but current State practice was to regard them as separate, parallel objections, formulated separately by each objecting State.

58. The draft guideline had not aroused much other comment. Mr. Kolodkin had said that, rather than emphasizing the unilateral nature of objections formulated jointly, it was more important simply to indicate the existence of the freedom to formulate an objection. He endorsed that approach; the unilateral nature of such objections should merely be mentioned in the commentary. The Drafting Committee should, however, deliberate very carefully before taking any definitive decision on the wording, because, as it stood, the text was very similar to that of draft guidelines 1.1.7 and 1.2.2, dealing respectively with reservations and interpretative declarations formulated jointly, which had already been adopted by the Commission. Any change to draft guideline 2.6.6 must take that into account.

59. Apologizing for the length of his statement, he said he considered it a special rapporteur's duty to respond fully to all comments. While it was not customary to reopen the debate after a special rapporteur had delivered his concluding remarks, any members to whose comments he had neglected to respond could console themselves with the knowledge that those comments had been fully reflected in the summary records. He presumed that there would be no objection to draft guidelines 2.6.3, 2.6.4, 2.6.5 and 2.6.6 being referred to the Drafting Committee, which would be able to give them due consideration and propose improvements.

60. The CHAIRPERSON said he took it that the Commission wished to refer draft guidelines 2.6.3, 2.6.4, 2.6.5 and 2.6.6 to the Drafting Committee.

*It was so decided.*

*The meeting rose at 12.50 p.m.*

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## 2918th MEETING

*Friday, 11 May 2007, at 10.05 a.m.*

*Chairperson:* Mr. Ian BROWNLIE

*Present:* Mr. Al-Marri, Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.

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**Reservations to treaties (*continued*) (A/CN.4/577 and Add.1–2, sect. C, A/CN.4/584, A/CN.4/586, A/CN.4/L.705)**

[Agenda item 4]

ELEVENTH REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. The CHAIRPERSON invited the members of the Commission to continue their consideration of the topic of reservations to treaties, in particular draft guidelines 2.6.7 to 2.6.15 proposed by the Special Rapporteur in his eleventh report.[96]

2. Ms. ESCARAMEIA observed that the Special Rapporteur was suggesting that the procedural rules for the formulation of objections, which constituted the subject of draft guideline 2.6.9, should be the same as those for reservations set out in the 1969 Vienna Convention. However, she pointed out that the reference to draft guideline 2.1.6 might be problematic because the situations were not identical: whereas the date of notification of a reservation marked the beginning of a 12-month period during which objections could be formulated, the notification of an objection did not have that effect.

3. Like many other members of the Commission, she viewed draft guideline 2.6.10 (Statement of reasons) solely as a recommendation and consequently endorsed it.

4. While she likewise agreed with the contents of draft guideline 2.6.11 (Non-requirement of confirmation of an objection made prior to the formal confirmation of a reservation), the statement in paragraph 114 of the eleventh report that objections "affect primarily the bilateral relations between the author of a reservation and each of the accepting or objecting States or organizations" was too categorical: objections might affect the whole treaty and all parties, especially if they prevented the entry into force of the treaty between the reserving and the objecting State. Moreover, it might be important for the other parties to the treaty to know that an objection had been formulated and whether or not the treaty was in force between two States.

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[96] Reproduced in *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/574.

5. As to draft guideline 2.6.13 (Time period for formulating an objection), she concurred with Mr. Caflisch that it would be preferable to delete paragraph 3 of draft guideline 2.1.6, which duplicated the draft guideline under consideration.

6. She shared the doubts expressed by several Commission members with regard to draft guideline 2.6.14 (Pre-emptive objections), since she did not understand how early objections would automatically become objections upon notification of the reservation, or how that could be enforced in practice. She wondered in particular whether pre-emptive objections had to be sent to the depositary for forwarding to the other parties and how they could in fact be called objections if no reservation had yet been formulated. Mr. Candioti had proposed that they should be termed "communications", but she would prefer to call them "conditional objections". In any event, further explanations would be required on that point.

7. She shared the view of a number of other Commission members regarding draft guideline 2.6.15 in that she did not approve of the phrase "does not produce all the legal effects of an objection that has been made within that time period". She agreed with Mr. Kolodkin that a late objection was not an objection, since it did not produce any legal effects. Nor was it an interpretative declaration, as Mr. McRae had suggested; rather, it was a simple statement. All in all, she preferred to speak of "communications" rather than "objections".

8. Having said that, she supported the referral of all the draft guidelines under consideration to the Drafting Committee.

9. Mr. FOMBA said that draft guidelines 2.6.7 (Written form) and 2.6.9 (Procedure for the formulation of objections) did not call for any particular comments. He believed that greater clarity was required in draft guideline 2.6.8 (Expression of intention to oppose the entry into force of the treaty) and that the time period for formulating an objection should perhaps be specified.

10. Draft guideline 2.6.10 was acceptable for the reasons set out in paragraphs 108 and 110 of the eleventh report. It did seem that a statement of the reasons for an objection would have more advantages than disadvantages, since such a provision was no more than a recommendation intended to guide State practice, a fact that should allay any anxieties. Draft guideline 2.6.11 was also acceptable, for it was based on State practice and its purpose was to entrench the Vienna regime by repeating the rule expounded in article 23, paragraph 3, of the 1969 and 1986 Vienna Conventions.

11. Turning to the "non-requirement of confirmation of an objection made prior to the expression of consent to be bound by a treaty", the subject of draft guideline 2.6.12, he considered that the Special Rapporteur's arguments in support of the guideline were well founded and acceptable, especially the fact that the non-confirmation of an objection posed no problem of legal security, as he had explained in paragraph 123 of his report. As for draft guideline 2.6.13, which to some extent duplicated paragraph 3 of draft guideline 2.1.6, he was personally in favour of the second of the two possible solutions proposed by the Special Rapporteur, namely allowing the two guidelines to coexist, rather than deleting paragraph 3 of draft guideline 2.1.6. With regard to draft guideline 2.6.14, he considered that a separate guideline on pre-emptive objections, as proposed by the Special Rapporteur, was preferable to a commentary supplementing draft guideline 2.6.13.

12. Turning to draft guideline 2.6.15 (Late objections), he said that the phrase "even when the reservation was formulated more than 12 months earlier" in paragraph 138 of the report was rather vague and ought to be clarified. He also thought that he detected an inherent contradiction in the phrase "even if these late objections do not produce any immediate legal effects" in the same paragraph and wished to know what the difference between legal and practical effects might be. He wondered, too, what was meant by the expression "all the effects" in the phrase "does not produce all the legal effects of an objection" in the text of the draft guideline. Was it necessary to conclude *a contrario* that such an objection did produce effects and, if so, what effects? Lastly, he endorsed the reasons put forward by the Special Rapporteur for employing the verb "formulate" rather than "make" in that particular case, and he agreed that draft guidelines 2.6.7 to 2.6.15 should be referred to the Drafting Committee.

13. Ms. JACOBSSON congratulated the Special Rapporteur on his excellent report. She nevertheless sought clarification with respect to the wording used in draft guideline 2.6.13, namely the phrase "a State or an international organization may formulate an objection to a reservation by the end of a period of 12 months after it is notified of the reservation". She wondered what was meant by "notified" and whether the word referred to the formal technical notification addressed to the depositary of the treaty, who was obliged to inform the other parties to the treaty thereof in accordance with article 77, paragraph 1 (*e*) of the 1969 Vienna Convention, or simply to general knowledge of the existence of a reservation that had been reported by the press or media. Depositaries did not always fulfil their obligation to inform, and it was sometimes hard to know which States were entitled to become parties to a treaty; that difficulty had arisen in the case of Iceland when it had sought to accede to the Treaty concerning the Archipelago of Spitsbergen, of which France was the depositary. The meaning of the word "notification" should therefore be clarified by the Drafting Committee or explained in the commentary.

14. She shared Ms. Escarameia's views on draft guidelines 2.6.14 and 2.6.15 and also supported referral of the draft guidelines to the Drafting Committee.

15. Mr. WISNUMURTI said that in draft guideline 2.6.8 the Special Rapporteur rightly reaffirmed the presumption of article 20, paragraph 4 (*b*) of the 1969 and 1986 Vienna Conventions that if an objection was not accompanied by a declaration opposing the entry into force of the treaty between an objecting State or international organization and the receiving State or international organization, the treaty would enter into force. He therefore agreed with the conclusion in paragraph 103 of the eleventh report that the objecting State must necessarily formulate the declaration

in question at the same time that it formulated the objection. As far as terminology was concerned, sometimes the draft guidelines spoke of "making an objection", while at other times they used the word "formulate". The Drafting Committee should ensure consistency in that regard.

16. As indicated in the eleventh report, State practice showed that Governments very much wished to have the option of raising an objection for pre-emptive purposes, for they could thus ensure to the fullest extent possible the legal effects of the provision they considered to be essential. He agreed that a pre-emptive objection would produce the legal effects of an objection only when the reservation had been actually formulated and notified, as proposed in draft guideline 2.6.14, and he considered that the term "objection" should be used in preference to "communication", which seemed to be more an indication of form.

17. The wording of draft guideline 2.6.15 (Late objections) was somewhat unclear. In paragraph 138 of his report, the Special Rapporteur said that "late objections do not produce any immediate legal effects"; however, late objections did not produce any legal effects, immediate or otherwise, since they had not been made within the 12-month period established in article 20, paragraph 5, of the Vienna Conventions. Later on, in paragraph 140, the Special Rapporteur wrote that a late objection could not "produce the normal effects of an objection made in good time". It was unclear what was meant by "normal effects". The same was true of the draft guideline itself, which stated that a late objection did not "produce all the legal effects of an objection made within [the specified] time period". In order to dispel any uncertainty, it would be more appropriate simply to say that late objections had no legal effect.

18. Similarly, paragraph 139 of the report affirmed that

> it follows from article 20, paragraph 5, of the Vienna Conventions on the Law of Treaties that if a State or international organization has not raised an objection by the end of a period of 12 months following the formulation of the reservation, or by the date on which it expressed its consent to be bound by the treaty, it is considered to have accepted the reservation with all the consequences that that entails.

He was uncertain whether that interpretation was correct. Given that the principle of consent was one of the underlying principles of the law of treaties, acceptance of a reservation could not be imposed on the author of a late objection against its will. The sole consequence of the late formulation of an objection was that it had no legal effect.

19. Mr. NOLTE, referring to draft guidelines 2.6.14 and 2.6.15, said that although he understood the need to deal with such communications in order to take account of significant State practice in the area, it was going too far to speak of pre-emptive and late "objections". Doing so might blur the distinction between the formal treaty-making process and related political statements. It was true that "pre-emptive" communications could discourage the formulation of reservations and contribute to the interpretation of the treaty and to the "reservations dialogue", but there was no need to call them "objections". The question of substance was whether a State that had made a pre-emptive communication should be forced to confirm its position once a reservation had actually been formulated. In his view, that should be the case. The objection could then be formulated with full knowledge of its effects, which would be better for legal certainty. Likewise, "late" communications could contribute to the interpretation of the treaty and to the reservations dialogue without their being termed "objections", although that was more debatable than in the case of "pre-emptive" communications. One solution might be to speak of "other objecting communications", which could be made before a reservation had been formulated and after the time period for formulating objections had expired. It might also be envisaged that the depositary should transmit such communications as though they were real objections.

20. Mr. VÁZQUEZ-BERMÚDEZ, referring to draft guideline 2.6.10 (Statement of reasons), said that he shared the view of the Special Rapporteur, who in paragraph 110 of the report wrote that "[i]n view of ... the absence of an obligation in the Vienna regime to state the reasons for objections, it would seem useful to include in the Guide to Practice a draft guideline encouraging States ... to expand and develop the practice of stating reasons". An objection giving reasons was in fact more likely to promote a dialogue on the reservation. With regard to the wording of the draft guideline, it would be preferable to replace the words "whenever possible" by "in general" so as not to imply that in some cases it might be impossible to explain the reasons for an objection.

21. Draft guideline 2.6.11 (Non-requirement of confirmation of an objection made prior to formal confirmation of a reservation) should be read together with draft guideline 2.6.13 (Time period for formulating an objection). As with reservations, the question of the time at which an objection could be formulated was part of the definition of objection, as the Special Rapporteur recognized in paragraph 59 of his eleventh report, where he added that, in order for the definition to be complete, it must specify which categories of States or international organizations could formulate an objection. Yet if an objection made before the expression of consent to be bound did not produce legal effects, there was no reason to call the expression of an opposition to a reservation an "objection". Similarly, "late objections", which could have practical effects by facilitating the reservations dialogue, did not have any legal effect, and the words "does not produce all the ... effects" in draft guideline 2.6.15 were misleading. Given that, as the Special Rapporteur pointed out, draft guideline 2.6.13 reproduced part of draft guideline 2.1.6, paragraph 3 of the latter and the part of the commentary relating to it should perhaps be deleted.

22. Mr. YAMADA said that he generally supported the contents of draft guidelines 2.6.7 to 2.6.15. With regard to the general approach, the primary objective of the Commission's work, as Mr. Candioti had pointed out, was to elaborate practical guidelines for States and international organizations, taking into account practice since the adoption of the 1969 and 1986 Vienna Conventions. When State practice was not entirely consistent with the Vienna regime, the Commission should avoid an excessively rigid interpretation of those instruments, which it had been careful to do in the draft guideline on late objections. When State practice was not sufficient, the Commission

should take the needs of States and international organizations fully into account to ensure that its guidelines really were adapted to them.

23. He noted that State practice in the area covered by draft guideline 2.6.12 (Non-requirement of confirmation of an objection made prior to the expression of consent to be bound by a treaty), was all but non-existent, as the Special Rapporteur pointed out. In paragraph 119 of his report the Special Rapporteur quoted the 1951 advisory opinion of the ICJ on *Reservations to the Convention on Genocide* with regard to the signatory's right to formulate an objection. In the subsequent paragraphs of the report he also seemed to be referring to cases in which signatory States could make objections prior to the expression of consent to be bound by a treaty. The phrase "prior to the expression of consent to be bound by the treaty" implied that the guideline was referring to an objection formulated by a signatory State. If that was the case, he agreed with the content of the draft guideline: when a signatory State formulated an objection upon or after the signature of a treaty, confirmation of the objection should not be required. On the other hand, the language of draft guideline 2.6.12 was somewhat ambiguous and might be interpreted to include cases in which a non-signatory State entitled to become a party to the treaty formulated an objection in accordance with draft guideline 2.6.5 (*b*). If that was not the case, it should be made clear in a footnote or in the commentary. However, he would have some difficulties if the draft guideline also covered objections formulated by non-signatory States, although it was hard to imagine a concrete example of such an objection. If a State formulated an objection to a reservation made by another State even before signing a treaty and did not become a party to the treaty until much later without confirming its objection, it would be difficult for the reserving State to know that an objection had been made long before. Accordingly, the Guide to Practice should indicate that a State or international organization that had formulated an objection to a reservation to a treaty before having signed the treaty should confirm the objection when it actually became a party to the treaty.

24. With regard to draft guideline 2.6.14 (Pre-emptive objections), he sought clarification of the phrase "exclude the application of the treaty as a whole". In the objection which it had formulated to reservations to article 66 of the 1969 Vienna Convention, cited in paragraph 131 of the report, Japan had not excluded the application of the treaty as a whole, but only of Part V of that Convention, which included article 66. Other States, such as Denmark and Finland, had formulated similar objections at that time.[97] Thus, in formulating an objection to a reservation, a State or an international organization could exclude the application of a particular part of a treaty that was not necessarily limited to the article to which the reservation was made but did not amount to the entire treaty. As he understood it, the Special Rapporteur did not intend to exclude that possibility, but he would appreciate it if he could clarify his intention.

25. With those comments, he said that he was in favour of referring draft guidelines 2.6.7 to 2.6.15 to the Drafting Committee.

26. Mr. HMOUD, referring to draft guideline 2.6.12, said he continued to believe that an objection could be made only by a contracting party. If an objection by a State or international organization that was not yet a contracting party did not produce legal effects at the time it was "made" or "formulated", there was no reason to permit it. Paragraph 122 of the report contained no legal argument to justify the granting of such a right. Nothing prevented a State or international organization that was not yet a contracting party from making a statement expressing its concerns about a reservation, but on no account could that be termed an objection.

27. As to draft guideline 2.6.15, he pointed out that late objections had no legal effect and that the wording was ambiguous on that point. Once again, a State could make a statement in which it expressed its opposition to a reservation, but such a statement could not produce the legal effects of an objection. He recommended that the other draft guidelines should be referred to the Drafting Committee.

28. Mr. PELLET (Special Rapporteur) recalled that the Commission still had to consider draft guidelines 2.7.1 to 2.7.9, on withdrawal and modification of objections to reservations (paras. 145–180 of the eleventh report). Of course, the Guide to Practice must contain guidelines on the subject, but he did not think that there was much to discuss: practice was more or less non-existent, and in general there was little question that the guidelines must be modelled to a greater or lesser degree on those relating to the withdrawal and modification of reservations. Within the framework of the traditional system of "unanimity" on reservations, the question of the withdrawal of an objection to a reservation had not arisen because the objection had produced both an immediate and radical effect in that it had prevented the reserving State from becoming a party to the treaty. The "flexible" system, which had been established first by the 1951 advisory opinion of the ICJ on *Reservations to the Convention on Genocide* and then by the 1969 and 1986 Vienna Conventions, was necessarily different. It had therefore been perfectly normal that in his first report of 1962, which had marked the beginning of the Commission's belated shift to the flexible system, Sir Humphrey Waldock had included a provision on the procedure for the withdrawal of objections.[98] The provision, cited in paragraph 147 of the report before the Commission, reproduced *mutatis mutandis* the corresponding rules on the withdrawal of reservations. Although the provision seemed necessary and logical, it had vanished from the Commission's final draft of 1966 in circumstances that he had been unable to ascertain. Not until the United Nations Conference on the Law of Treaties had the problem of the withdrawal of objections been reintroduced, in the same spirit. Although the provisions of the 1969 Vienna Convention offered few details in that regard, there was every reason to take the provisions on reservations as a model and

[97] See *Multilateral Treaties Deposited with the Secretary-General–Status as at 31 December 2006*, vol. II (United Nations publication, Sales No. E.06.V.3) chap. XXIII; available at http://treaties.un.org.

[98] *Yearbook ... 1962*, vol. II, document A/CN.4/144, p. 62 (para. 5 of draft article 19).

simply to adapt to objections the rules applicable to reservations included in the Guide to Practice in 2003 (draft guidelines 2.5.1 to 2.5.11).

29. Draft guidelines 2.7.1 (Withdrawal of objections to reservations) and 2.7.2 (Form of withdrawal of objections to reservations) merely reproduced article 22, paragraph 3, and article 23, paragraph 4, respectively, of the 1969 and 1986 Vienna Conventions. The title of draft guideline 2.7.1 might be misleading, and the Drafting Committee should perhaps change it. Although draft guideline 2.7.1 introduced all the subsequent draft guidelines on the question of withdrawal or modification of an objection, in reality it dealt only with the time at which a reservation could be withdrawn. Draft guideline 2.7.3 (Formulation and communication of the withdrawal of objections to reservations) simply recalled that draft guidelines 2.5.4, 2.5.5 and 2.5.6 were applicable *mutatis mutandis* to the withdrawal of objections to reservations.

30. The Commission had considered the effects of the withdrawal of reservations when it had studied the withdrawal procedure. Although rather formal procedural problems were involved, the Commission had considered, no doubt rightly, that it would be preferable to group everything on withdrawal together. Indeed, regardless of the effects of reservations, the effects of withdrawal could be dealt with in a manner vague and flexible enough to obviate the need to wait until the Commission had addressed the question. The same considerations should apply to the withdrawal of objections to reservations, and the effects of withdrawal should be considered in the part of the Guide to Practice currently under discussion. On the other hand, it was surely not possible to refer to the guidelines dealing with the effects of the withdrawal of reservations because there the problems arose in very different—and not always simple—terms. It was true that to withdraw an objection to a reservation was tantamount to accepting the reservation (and that was a partial response to the problem raised by Mr. Wisnumurti), but did that mean that the reservation had full effect on account of the withdrawal of the objection? The phrase "the reservation has full effect" in paragraph 159 of the eleventh report seemed logical, but it was not self-evident, if only because the effects of an objection were by no means unequivocal. If one adhered to the terms of the 1969 Vienna Convention, an objection could, depending on whether or not the reserving State made the declaration provided for in article 20, paragraph 4 (*b*), prevent entry into force of a treaty in the relations between two States. However, the effects of withdrawal were no more unequivocal than the effects of the objection. Withdrawal of the objection could also permit the entry into force of the treaty between all the parties. Just as an objection could block entry into force in certain specific cases, so could its withdrawal have the radical effect of facilitating it, and not only because the reservation would produce effects. In view of the complexity of the question, it would be preferable to consider that the withdrawal of an objection amounted to acceptance of the reservations. That was implicitly done in draft guideline 2.7.4 (Effect of withdrawal of an objection), which appeared in paragraph 160 of the report and which seemed adequate, once the Commission had defined the effects of acceptance.

31. It was possible, however, to be more specific with regard to the date on which withdrawal of an objection took effect. That was the purpose of draft guidelines 2.7.5 (Effective date of withdrawal of an objection) and 2.7.6 (Cases in which an objecting State or international organization may unilaterally set the effective date of withdrawal of an objection to a reservation), the first paragraph of which was taken from article 22, paragraph 3 (*b*), of the 1986 Vienna Convention. The logic of that rule was not necessarily irrefutable, as explained in paragraphs 163 and 165 of the eleventh report, but in effect the resulting drawbacks were so limited and improbable that they surely did not justify rejecting an express rule contained in the Vienna Conventions. The rule set out in draft guideline 2.7.5 was obviously not imperative: not only could States set it aside, but it could also be paralysed by a unilateral declaration by the author of the objection, whom nothing prevented from setting as the effective date of withdrawal of its objection a date later than that corresponding to the presumption in the draft guideline. On the other hand, for the reasons indicated in paragraph 168 of the report, it was hardly acceptable that the author of the objection should set the effect of withdrawal of the objection at an earlier date, because then the reserving State, without being aware of it, would be bound by obligations that had been previously offset by the reservation, a situation which could hardly be contemplated. Of course, in principle the author of the reservation had every reason to welcome the withdrawal of the objection, because he thus obtained satisfaction, but in order to be able to welcome the withdrawal, he would still have to receive notification thereof.

32. It was also possible to consider—or to imagine, as practice was lacking—that a State or international organization might not withdraw its objection in full, but only in part, either by withdrawing the declaration provided for in article 20, paragraph 4 (*b*), of the Vienna Convention, which had prevented the treaty from entering into force in the relations between the reserving State and the objecting State, or by limiting the content of the objection, which would then concern only a specific part of the reservation. Those two possibilities were covered by the first paragraph of draft guideline 2.7.7 (Partial withdrawal of an objection), which appeared in paragraph 173 of the report and in which the phrase "on the treaty as a whole" was an implicit reference to draft guideline 1.1.1. The second paragraph avoided a repetition of the text of draft guidelines 2.7.1, 2.7.2 and 2.7.3, the latter having already referred to other draft guidelines.

33. The text of draft guideline 2.7.8 (Effect of a partial withdrawal of an objection) was modelled on that of draft guideline 2.5.11 (Effect of a partial withdrawal of a reservation) contained in footnote 320 of the report.[99] However, for the reasons set out in paragraph 175, he had deemed it unnecessary to adopt such detailed provisions and thus proposed the text at the end of the paragraph.

34. Draft guideline 2.7.9 (Prohibition against the widening of the scope of an objection to a reservation) specifically contemplated the case in which a State that had made

[99] For the text of this draft guideline and commentary thereto, see *Yearbook ... 2003*, vol. II (Part Two), pp. 91–92.

a simple objection—i.e., without also making the declaration under article 20, paragraph 4 (*b*), of the Vienna Conventions, which made it possible to prevent the treaty from entering into force in the relations between the reserving State and the objecting State—wanted to widen its scope. He had already said what he thought about that procedure when he had introduced draft guideline 2.6.13. Just as the widening of the scope of a reservation, which draft guideline 2.3.5 addressed, must be regarded as a late formulation of a new reservation, the widening of the scope of an objection must be taken to be a new objection which not only did not produce effects if it was formulated after the period of time stipulated in article 20, paragraph 5, of the Vienna Conventions but also could not be formulated after the initial objection made within that time period, even if the time period had not yet expired. That was tantamount to repudiating acceptance of the entry into force of the treaty between the two States concerned in the terms resulting from the interplay of reservation and objection, and it was out of the question, both for reasons of good faith and because the reserving State would not have the chance to take a position, and thus the objecting State would impose its will, although it had already made it known that it was in agreement with the entry into force of the treaty in the relations between the two States. That was the reason for the rather radical drafting of the draft guideline contained in paragraph 180 of the eleventh report.

35. Admittedly, the draft guidelines responded more to a logical and even mathematical necessity, as one member of the Commission had observed, although their potential practical utility could not be completely ruled out. He welcomed the Commission's clear instructions to the Drafting Committee and hoped that all the draft guidelines would be referred to it. He thanked the members of the Commission for their positive response to most of his proposals and said that he was convinced by the arguments put forward by nearly all those who had proposed changes to two of the draft guidelines.

**Organization of the work of the session (*continued*)**[*]

[Agenda item 1]

36. Mr. VARGAS CARREÑO said that the Planning Group, which he would chair as first Vice-Chairperson and of which Mr. Petrič had been appointed Rapporteur, would be composed of the following members of the Commission: Mr. Al-Marri, Mr. Caflisch, Mr. Comissário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Niehaus, Mr. Nolte, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue and Mr. Yamada.

37. Mr. PELLET said that he would also like to join the Planning Group.

38. Mr. VARGAS CARREÑO said that Mr. Pellet's presence in the Planning Group would be most welcome.

*The meeting rose at 12.30 p.m.*

[*] Resumed from the 2915th meeting.

## 2919th MEETING

*Tuesday, 15 May 2007, at 10.05 a.m.*

*Chairperson:* Mr. Ian BROWNLIE

*Present:* Mr. Al-Marri, Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.

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**Reservations to treaties (*continued*) (A/CN.4/577 and Add.1–2, sect. C, A/CN.4/584, A/CN.4/586, A/CN.4/L.705)**

[Agenda item 4]

ELEVENTH REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. Mr. PELLET (Special Rapporteur), summing up the debate on draft guidelines 2.6.7 to 2.6.15, on the procedure for the formulation of objections, contained in paragraphs 87 to 144 of his eleventh report,[100] said that the discussion on the draft guidelines had been calm, disciplined, serious and conclusive. As Special Rapporteur, he had been gratified to note that there had been a ready consensus that the draft guidelines should be referred to the Drafting Committee. All too often in the past, the Commission's discussions had strayed from the point and the Drafting Committee, deprived of clear guidance, had been forced to depart from its role and tackle questions of principle. It was clear from the current debate, by contrast, that most of the draft guidelines had, by and large, given rise to few difficulties. The exceptions were draft guidelines 2.6.14 and 2.6.15, which clearly merited closer consideration. An important problem—albeit one that was more or less resolved—also arose in connection with draft guideline 2.6.12 (Non-requirement of confirmation of an objection made prior to the expression of consent to be bound by a treaty). He had, on the whole, been convinced by the criticisms that had been put forward.

2. To begin with the draft guidelines that had presented little or no difficulty, he noted that few members of the Commission had commented on draft guideline 2.6.7 (Written form), but that of those who had, most had approved. They were right to do so, because it simply reflected article 23, paragraph 1, of the 1969 and 1986 Vienna Conventions. Much the same could be said of draft guideline 2.6.8 (Expression of intention to oppose the entry into force of the treaty), although Mr. Fomba had wondered whether it might be appropriate to introduce a reference to a time limit. Such a reference was, however, probably unnecessary, because it appeared in other draft guidelines. Mr. Wisnumurti had asked whether, notwithstanding its reflection of article 20, paragraph 4 (*b*), of the

[100] Reproduced in *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/574.