United Nations
General Assembly
Distr.: General

A/C.6/54/SR.24

Fifty-fourth session
Official Records

20 December 1999
English
Original: French

Sixth Committee

Summary record of the 24th meeting
Held at Headquarters, New York, on Tuesday, 2 November 1999, at 3 p.m.

Chairman: Mr. Mochochoko . . . . . (Lesotho)

Contents

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

99-82109 (E)

The meeting was called to order at 3.20 p.m.

Agenda item 155: Report of the International Law Commission on the work of its fifty-first session (*continued*) (A/54/10 and Add.1 and 2)

1. **Mr. Galicki** (Chairman of the International Law Commission), introducing chapter VI of the report of the International Law Commission (A/54/10), noted that at its fifty-first session, the Commission had considered the part of the third report of the Special Rapporteur which it had not been able to consider at its fiftieth session, and also the first part of the fourth report on the topic. It had adopted 18 draft guidelines pertaining to the definition of reservations and interpretative declarations, which constituted a first chapter of the Guide to practice which it had set out to prepare. However, in the light of the consideration of interpretative declarations it had adopted a new version of draft guideline 1.1.1 (Object of reservations) and of the draft guideline without a title or number which had become in the new version draft guideline 1.6 (Scope of definitions). The draft guidelines were accompanied by commentaries and the first chapter was divided into six sections concerning: definition of reservations (sect. 1); definition of interpretative declarations (sect. 2); distinction between reservations and interpretative declarations (sect. 3); unilateral statements other than reservations and interpretative declarations (sect. 4); unilateral statements in respect of bilateral treaties (sect. 5) and scope of definitions (sect. 6).

2. With regard to draft guideline 1.1.1, "Object of reservations", which had been adopted in 1998, and which related to "across-the-board" reservations, the Commission had adopted it on the understanding that it would be re-examined in the light of the discussion on interpretative declarations. It had been re-examined and redrafted in order to define accurately and precisely the practice of reservations referring to a treaty as a whole with respect to certain specific aspects. Such reservations excluded or limited the application of a treaty to certain categories of persons, objects, situations, territories, or in certain specific circumstances or for special reasons relating to the international status of their author. That draft guideline purported to remove any ambiguity or controversy regarding that widespread practice which gave a broad interpretation to the Vienna definition. Such precision in no way prejudged the permissibility or impermissibility of general and imprecise reservations. Moreover, the new formulation avoided any confusion with declarations relating to the implementation of the treaty at the internal level or with general statements of policy which were the object of other draft guidelines.

3. Draft guidelines 1.1.2, 1.1.3, and 1.1.4 had been adopted in 1998, and in 1999 the Commission had adopted draft guideline 1.1.5, "Statements purporting to limit the obligation of their author", which clarified the Commission's view of the question of "extensive" reservations, often confused with statements designed to impose new obligations on the other parties, not provided for by the treaty, and which were not reservations within the meaning of the present Guide to practice. Draft guideline 1.1.5 related only to statements which, because they were designed to exempt their author from certain obligations under the treaty or widen its rights, restricted by correlation, the rights of the other contracting parties or increased their obligations. To the extent that all such statements constituted reservations, the temporal element came into play, and they should be made only when the State expressed its consent to be bound by the treaty.

4. Draft guideline 1.1.6 concerned unilateral statements purporting to discharge an obligation by equivalent means, which also constituted reservations. Since such a statement purported to modify the legal effect of some provisions of the treaty in their application to its author, it therefore came within the framework of the definition of reservations.

5. The second section of the first chapter of the Guide to practice concerned the definition of interpretative declarations (draft guideline 1.2). The definition adopted by the Commission filled a certain vacuum since both the 1969 and 1986 Vienna Conventions were silent on that matter. He hoped that guideline would clarify the distinction between interpretative declarations on the one hand and reservations on the other hand, or other types of unilateral declarations made in respect of a treaty. The latter was considered in another section of the first chapter.

6. Two points in common between reservations and interpretative declarations were that both were unilateral statements and in both the phrasing or name chosen by their author was irrelevant. Their aim was different: interpretative declarations were aimed at interpreting the treaty as a whole or certain of its provisions, whereas reservations aimed to exclude or modify the legal effect of certain provisions of the treaty in their application to their author. The interpretation purported to clarify the meaning and scope that the author, State or international organization attributed unilaterally to the treaty or to certain of its provisions.

7. Another point worth mentioning was whether the temporal limitation applicable to reservations was justified with respect to interpretative declarations. The Commission had thought not, since such interpretations might coexist with other simultaneous, prior or subsequent interpretations which might be made by other contracting parties or third parties and might be formulated at any time in the life of the treaty. Of course, that should not be seen as an encouragement to formulate interpretative declarations at inappropriate times, since it could lead to abuse and create difficulties. Lastly, that definition again in no way prejudged the validity or effect of such declarations.

8. Draft guideline 1.2.1 addressed the issue of conditional interpretative declarations, a practice whereby a State or an international organization made its interpretation a condition of its consent to be bound by the treaty. Although such declarations were closer to reservations than to interpretative declarations in that they sought to produce a legal effect on the provisions of the treaty, the Commission did not believe that those two categories of unilateral statements were identical. Even if the distinction was not always obvious, there was a great difference between application and interpretation. That was also the direction taken in jurisprudence, as shown in the decision of the European Court of Human Rights in the *Belilos* case and the Arbitral Tribunal on the case of the *Mer d'Iroise* between France and the United Kingdom.

9. The fact remained that the category of unilateral declarations referred to came very close to reservations, particularly since the essence of both was to pose a condition. From that perspective, the Commission believed that the temporal element was indispensable for conditional interpretative declarations in order to prevent, insofar as possible, disputes among the parties as to the reality and scope of their commitments under the treaty. Consequently, the instances in which a reservation might be formulated, which were outlined in draft guideline 1.1.2, adopted in 1998, could be transposed to the formulation of conditional interpretative declarations.

10. Draft guideline 1.2.2 addressed the issue of interpretative declarations formulated jointly by several States or international organizations and was the counterpart of draft guideline 1.1.7 on reservations formulated jointly; it reflected common practice. As in the case of reservations, the possibility of joint formulation of interpretative declarations could not undermine the unilateral character of such declarations. Moreover, the legal regime applicable to jointly formulated interpretative declarations was not the same as the one applicable to reservations formulated jointly.

11. The third section of the first chapter of the Guide to practice concerned the distinction between reservations and interpretative declarations. It also dealt with the method of implementing the distinction and with certain "indicators" that were useful in that respect. Draft guideline 1.3 stated that the definition of a unilateral statement as a reservation or an interpretative declaration was determined by the legal effect it was purported to produce. In other words, reservations were distinguished from interpretative declarations principally by the objective pursued by the State or international organization that made them: in formulating a reservation, the author purported to exclude or modify the legal effect on itself of certain provisions of the treaty, or of the treaty as a whole with regard to certain aspects, while, in formulating an interpretative declaration, it intended to specify or clarify the meaning and scope that it attributed to the treaty or to certain of its provisions.

12. Draft guideline 1.3.1 concerned the method of implementation of the distinction and, in that regard, the Commission considered that the point of departure should be the principle that the purpose sought was reflected in the text of the statement. At first glance, then, it was a problem of interpretation that could be resolved by means of the normal rules of interpretation in international law. However, in the Commission's view, while the rules provided useful indications, they could not be transposed purely and simply to reservations and interpretative declarations because of their special nature. International jurisprudence adopted an identical position and considered that the rules of interpretation of a treaty provided useful guidelines for the interpretation of unilateral statements. That position was reflected in draft guideline 1.3.1, inspired by the wording used by the International Court of Justice in the *Fisheries Jurisdiction Case (Spain v. Canada) Jurisdiction of the Court*, and started with the interpretation of the statement in good faith in accordance with the ordinary meaning of its terms, in the light of the treaty to which it referred. Due regard should also be given to the intention of the declarant, insofar as it could be ascertained. Lastly, that method could be transposed to the distinction between simple and conditional interpretative declarations.

13. Draft guideline 1.3.2, entitled "Phrasing and name", stated that those terms provided only an indication of the purported legal effect. In the Commission's view, while the phrasing and name of a unilateral statement did not constitute part of the definition of an interpretative

declaration any more than they did of the definition of a reservation, nonetheless, they formed an element of appraisal which must be taken into consideration and which could be viewed as being of particular significance when a State formulated both reservations and interpretative declarations with regard to the same treaty at the same time. In the latter case, the phrasing or name given by the declarant constituted a rebuttable presumption on the character of the unilateral statement.

14. Draft guideline 1.3.3 focused on the particular case of the formulation of a unilateral statement when a reservation was prohibited. In that case, there was a rebuttable presumption that such a statement was not a reservation, consonant with the well-established general principle of law that bad faith was not presumed.

15. Section 4 of the first chapter dealt with unilateral statements other than reservations and interpretative declarations and often confused with them. It included six draft guidelines. Draft guideline 1.4 could be regarded as a general exclusionary clause purporting to limit the scope of the Guide to practice to reservations and interpretative declarations, to the exclusion of other unilateral statements of any kind which were formulated in relation to a treaty. Draft guideline 1.4.1 referred to statements to undertake unilateral commitments, in other words obligations going beyond those imposed upon the declarant by the treaty, which were neither reservations nor interpretative declarations. Draft guideline 1.4.2 concerned unilateral statements purporting to add further elements to a treaty, which, the Commission believed, constituted proposals to modify the content of the treaty. Draft guideline 1.4.3 referred to statements of non-recognition which, in the Commission's view, did not constitute reservations and, accordingly, were outside the scope of the Guide to practice, even if they purported to exclude the application of the treaty between the declaring State and the non-recognized entity. The Commission avoided specifying the nature of that entity, which could be a State, a Government or any other entity, or even certain situations, notably territorial ones.

16. Draft guideline 1.4.4 concerned general statements of policy, which were often made on the occasion of the signature of a treaty or the consent to be bound by a treaty, whereby the State or organization formulating them expressed its views on the treaty or on the subject matter of the treaty, without purporting to produce a legal effect on the treaty. Lastly, draft guideline 1.4.5 referred to statements concerning modalities of implementation of a treaty at the internal level, without purporting as such to affect the rights and obligations of the declarant towards the other contracting parties.

17. Section 1.5 dealing with unilateral statements in respect of bilateral treaties comprised three draft guidelines regarding reservations and interpretative declarations to bilateral treaties. Draft guideline 1.5.1 addressed the question whether reservations to bilateral treaties were possible. The Commission had concluded that unilateral statements purporting to obtain from the other party a modification of the provision of the treaty to which the author subjected the expression of its final consent to be bound did not constitute reservations in the usual meaning of the term, since they purported to modify the actual provisions of the treaty. Having reached that conclusion, the Commission had decided to examine once and for all the issues pertaining to "reservations" to bilateral treaties, in draft guidelines 1.5.2 and 1.5.3, since it did not intend to return to the matter in the context of the topic of reservations to treaties.

18. Draft guideline 1.5.2 on interpretative declarations in respect of bilateral treaties reflected a general practice accepted in international law. Draft guideline 1.5.3 concerned the legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party. In the Commission's view, after acceptance the interpretative declaration constituted the authentic interpretation of the treaty. The final draft guideline 1.6 entitled "Scope of definitions", adopted the previous year without a title or number, had been reformulated by the Commission in the light of the discussions on interpretative declarations. The fundamental idea was unchanged, namely, that the permissibility and effects of unilateral statements included in the first chapter of the Guide to practice under the rules applicable to them were not otherwise affected by the definition.

19. In conclusion, he recalled that in 1995 the Commission had sent States and organizations a questionnaire on the topic of reservations to treaties. The response had been extremely encouraging, and he wished to thank those that had responded, but he would like to ask States that had not replied to the questionnaire to do so. It was unnecessary to stress how useful the answers were to the Special Rapporteur and to the Commission for the continuation of their work on the topic.

20. **Mr. Leanza** (Italy), referring to chapter V of the Commission's report, said that the position of the Government of Italy was that the draft articles on State responsibility should deal with exceptionally serious

wrongful acts, or international crimes, as well as ordinary wrongful acts, or international delicts.

21. In general his delegation approved the Commission's decision to shorten and simplify chapter III of Part One of the draft articles on State responsibility. Too many provisions made any treaty instrument harder to grasp, and a highly detailed breakdown of abstract cases was more appropriate to domestic normative law and detrimental to the fluidity and flexibility proper to international law. However, the simplification had gone too far in eliminating articles 20, 21 and 23, setting forth the distinction between obligations of conduct, obligations of result, extended obligations of result and obligations of prevention. Elimination of superfluous rules should not go so far as to ignore current State practice in international relations. Consideration of State practice and the decisions of international courts revealed the nearly constant application of the distinction between obligations of result and obligations of conduct, particularly in relation to the protection of fundamental human rights. His delegation felt that the distinction could not be completely eliminated from the draft articles; however, in order to make the draft more straightforward yet complete, a general reference to the distinction could be included in article 16, or the original provision could be worded more simply. Merely to mention the distinction in the commentary, as suggested, was not an acceptable solution, since the commentary had only an interpretative and not a normative function.

22. With regard to the exhaustion of local remedies contemplated in draft article 26 *bis*, leaving aside for the moment theoretical debates about the nature and significance of the rule on prior exhaustion of local remedies, it should be clarified that the rule concerned not the time when a diplomatic complaint or international judicial claim was presented, but the time when the internationally wrongful act was actually committed and thus triggered the international responsibility of the foreign State on which the complaint or claim was based. In other words, it concerned the determination of whether an international wrong had been committed. If it had not, clearly State intervention was not possible, for lack of grounds. In that light, the wording of article 26 *bis* was unsatisfactory, as it only begged the question. The issue was not one of coordinating the norms on the objective element of State responsibility with the exhaustion of local remedies rule but of identifying the moment when the internationally wrongful act occurred and evaluating the international responsibility of the State at the international level. It was a matter of substance and not of the implementation of State responsibility. The question was of crucial importance and should be reconsidered.

23. His delegation fully supported the Commission's decision to retain chapter IV of Part One of the draft articles. The chapter dealt with a fundamental aspect of responsibility, the attribution of a wrongful act to a State. The issue involved not primary rules setting forth the precise conduct a State must follow but secondary rules governing the State's international responsibility. The situation was further complicated when several States acted jointly in the perpetration of the wrongful act. The wording of articles 27, 27 *bis*, 28 and 28 *bis* appeared to satisfy the requirements of the rule of customary law limiting the applicability of international agreements to the States parties.

24. Chapter V of Part One of the draft articles dealt with the circumstances precluding wrongfulness, a highly important aspect of the regime of international State responsibility for wrongful acts. The wide-ranging and thorough debate on the topic in the Commission had inspired a general rethinking about circumstances precluding wrongfulness and had led to the softening of certain positions which the Italian Government had found too radical and completely out of step with State practice. An example was the proposal to delete article 29 on the consent of the injured State as a circumstance precluding wrongfulness. The importance of consent in that regard was undeniable, with the sole proviso that such consent must be in force at the time of the act, since consent *a posteriori* would constitute a waiver on the part of the injured State of its right to claim reparation, without doing away with the wrongfulness of the act, which was already established. His delegation set great store by article 29 and was satisfied with the wording. It also felt that an article recognizing the precedence of norms of *jus cogens* over other norms of international law was useful, and it was therefore in favour of retaining article 29 *bis*, even if it were rarely applied. He failed to understand why the definition of "peremptory norm" included in the draft adopted by the Commission in 1996 had been omitted.

25. As far as countermeasures were concerned, that topic was obviously linked to the outcome of the Commission's consideration of the regime of countermeasures in Chapter III of part two of the draft articles. Countermeasures were recognized under international jurisprudence as having the effect of precluding the wrongfulness of a conduct as a reaction to the wrongful acts of others. International practice was not very clear on the issue of whether countermeasures should be taken only after every possible concerted dispute settlement procedure had been

exhausted. Since it could not be affirmed that a strict rule had been established in that area, nothing could prevent a State in a state of necessity from taking such countermeasures as it deemed appropriate. The right to self-defence still had a function in modern international law, despite its institutionalization and verticalization. There was no need to include a provision on procedures to invoke a circumstance precluding wrongfulness, because the practice of inter-State relations in that regard was flexible and informal. One only needed to think about the problems of implementation and the discussions on the articles of the 1969 Vienna Convention on the Law of Treaties relating to objections to reservations or to the articles on the regime of circumstances of invalidity or extinction of international agreements. As far as responsibility was concerned, it should be borne in mind that most circumstances precluding wrongfulness operated automatically. It was therefore impossible, and in any case useless, to give advance notice of them. As far as the "clean hands" principle was concerned, regardless of its legal nature — metajuridical principle or principle of positive law — and its consolidation as a norm of general international law, it did not constitute in any case whatsoever a circumstance precluding wrongfulness. Therefore, it should not be treated as such. Likewise, the issue of due diligence did not come under chapter V, because it was logically connected to the distinction between breaches of the obligation of result, conduct and prevention. It was not necessary to include duress among the circumstances precluding wrongfulness, since all the hypotheses of duress provided for by the 1969 Vienna Convention on the Law of Treaties were already covered by article 31 on *force majeure*.

26. Referring to Chapter VI of the report on reservations to treaties, he recalled the decision to reformulate draft guideline 1.1.1 on object of reservations. In the previous version, reference had been made to the possibility of the reservation covering the treaty as a whole where the provision on the definition of reservations referred only to exclusions or modifications of the legal effect of certain specific provisions of the treaty. The new wording sought to eliminate the contradiction between the two texts by specifying that a reservation could be made to the treaty as a whole, but only in respect of specific aspects of its implementation. That approach reflected better the practice of across-the-board reservations that excluded the application of a treaty as a whole to certain categories of persons, objects, situations or circumstances. While that point clarified the terms under which it was possible *in abstracto* to conceive of a reservation to a treaty as a whole, it made it necessary to explore further the various aspects of the related issue of limitations to the admissibility of reservations. While the issue of the definition of reservations differed from that of their admissibility and legal effects, an explicit definition of across-the-board reservations could contribute to intensifying an already widespread practice of entering unconditional reservations of that type, if the scope of the provisions of the Vienna Convention with respect to the limits of admissibility, as they related to compliance with the purposes and objectives of the treaty, was not specified.

27. In that regard, the Commission might consider drafting a special regime for reservations to treaties other than bilateral treaties, including human rights treaties and codification agreements. Human rights treaties were a special category of international agreements for which the regime provided by the 1969 Vienna Convention relating to the effects of inadmissible reservations was unsatisfactory. The indivisible obligations imposed on States parties by those international instruments rendered the bilateral reservations and objections regime ineffective. In any case, the regime provided by the Vienna Convention did not preclude the establishment of special regimes designed to clarify the meaning and possible implications of essential clauses such as the limitation to the protection of the purpose and goal of the treaty. That issue was of considerable importance to the development of contemporary international practice. Moreover, in the context of such practice, there was an increasingly marked tendency to follow specific lines of conduct in the case of reservations to and denunciations of human rights treaties. The States members of the European Union and the Council of Europe tended to reduce reservations to such treaties by negotiating with the author States to withdraw or amend them, or by proposing concerted objections. The practice of concerted objections was an element that should be taken into account in the Commission's future work in order to establish and implement a special regime for reservations to non-synallagmatic treaties.

28. He fully endorsed the solution adopted with respect to the definition of unilateral declarations purporting to increase the rights or obligations of States beyond what was provided by a treaty. Those reservations could not constitute reservations within the strict meaning of the term, because they had no possible binding force under the treaty. In that regard, the draft guidelines themselves stipulated that such statements were outside the scope of the Guide to practice and could, depending on their content, be considered either as unilateral obligations or proposals to modify the treaty.

29. He endorsed the decision to treat the definition of interpretative declarations separately in the guidelines because, notwithstanding the silence of the 1969, 1978 and 1986 Vienna Conventions on that issue, international practice provided for frequent recourse to interpretative declarations and the difference between them and reservations very often seemed extremely subtle. Likewise, the clarification to the effect that a unilateral act should not be identified on the basis of its form, but rather on the basis of the effects it sought to produce, should be retained. Indeed, the literal content of any declaration or designation thereof was but one element that went to ascertain its true nature.

30. While the guidelines adopted by the Commission at its previous session were very clear and detailed, account should be taken of the growing criticism of the current procedure for reservations because of its ineffectiveness in relation to non-synallagmatic agreements. Since the Commission was currently developing norms in that area that would not be binding on States, it might be useful for it to address the issue by drawing on the attempts that had already been made to ensure that the above-mentioned agreements were universal in scope in terms of both form and substance, as a result of reservations contrary to the objectives and goals of treaties. The codification and progressive development of international law required the Commission to steer clear of conventional forms when such forms were disputed in inter-State relations.

31. **Mr. Berman** (United Kingdom) said that, since his arrival in the Sixth Committee in 1970, the participation of delegations in the work of the Committee, and especially in discussions and negotiations point by point and issue by issue, seemed to have diminished and become more calculated, owing to the growing number of Member States and the emergence of groups of States presenting a single position. On the positive side, that favoured mediation but, on the negative side, it led to the adoption of longer, muddier and less legally careful resolutions, which supposedly rested on a notion of "general agreement". In the past, the voting on draft resolutions had sometimes been a trial of strength, and sponsors had been disinclined to negotiate; but negotiations had been based on real issues and preceded by a real debate. Currently, although consensus was the norm, it was also unfortunately purely formal and involved texts that lacked legal meaning and weight. That phenomenon affected not only the Sixth Committee but also the other Main Committees of the General Assembly, and even other United Nations bodies such as the Security Council, whose decisions were directly binding in law.

32. To remedy that situation, the burden of work during and between sessions of the International Law Commission should, first and foremost, be divided among a greater number of delegations, for the sake not only of fairness but also of independence and with a view to genuinely representing the different existing points of view. Governments were also recommended to continue to appoint to the Sixth Committee young lawyers who could gain invaluable experience in international law but would also lend the Committee their dynamism and legal skills.

33. He had compared not only the working methods of the Committee but also the annual ILC report with what it had been in 1970, and noted with satisfaction that the report showed many improvements in form and substance and was easier to read. In his view, the proposal to split the sessions of ILC into two shorter sessions would reap gains beyond the Commission's expectations. The modernization of the Commission's working methods, largely attributable to the efforts of new delegations that had joined since 1970, did not obviate the need to continue to survey the field for new topics to fuel its future debates. Governments had a part to play in that process.

34. Turning to the difficult question of the role of the Committee and of member delegations in analysing the report of the Commission, he stated that dialogue was an essential part of that analysis and consisted of an exchange between two speakers. For reasons related to the nature of the annual debate and the quality of governmental responses to Commission reports and questionnaires, that exchange was not as fruitful as it should be. The introduction of mini-debates on individual chapters of the report instead of a blockbuster debate on the whole report had brought about a reduction in the length of statements and introduced some variety into the topics dealt with during the session. The question should nevertheless be asked whether that reform had improved the quality of the debate, since the consideration of a topic lasted only two or three meetings, obliging delegations to deliver statements either prepared in advance or hastily written at the last moment.

35. On the other hand, he did not miss the former practice of sending Commission members to the Sixth Committee to offer their Governments' views on texts they had helped to formulate. Confusing the roles of Commission member and government representative had not ensured independence or objectivity at the time, and would do so even less now. The problem arose from the fact that neither the members of the Sixth Committee nor the members of the Commission had a clear idea of what the Sixth Committee's annual debate on the Commission's

report should be. The occasion for delegations simply to pay respect to the work done by the Commission or to express their views and concerns with a view to guiding its future work? The occasion for ILC to hear the immediate reaction of States to its report or subsequently to receive detailed comments and observations? That approach could perhaps be replaced by a series of informal meetings throughout the year. The question was what form the debate should take and whether its form should remain unchanged year after year. In his view, the debate did not need to take the same form every year. Commission members might be invited to the General Assembly to attend the meeting of legal advisers for an informal exchange; or informal meetings might be organized on ILC topics for the special rapporteurs dealing with those subjects, other Commission members, and delegations. He hoped that his proposals would be followed up in 2000, and that in the interim they would be given careful consideration, particularly during the Commission's fifty-second session.

36. **Mr. Szénási** (Hungary) said that his delegation, which endorsed the draft guidelines in general, would like to comment on three subjects: impermissible reservations, reservations to bilateral treaties, and conditional interpretative declarations to bilateral treaties. Regarding the matter of impermissible reservations, his delegation noted with satisfaction that the Commission had set out, in the commentary on the definitions, some basic clarifying principles. While his delegation shared the view of ILC with regard to the permissibility of across-the-board reservations, it was firmly convinced that those reservations should continue to be prohibited in the case of certain multilateral normative treaties, such as human rights treaties. It would perhaps be useful for ILC to explore, at a later stage, the question of the admissibility of reservations to those treaties, including the criteria for such admissibility and the possible role to be played by the bodies monitoring human rights treaties. At a later stage it could revert to the question of definitions and include elements on impermissible reservations either in the draft guide or in the commentary.

37. Hungary shared the view of the Special Rapporteur that unilateral statements in respect of bilateral treaties did not constitute reservations. In almost all instances, the aim of the parties formulating that sort of statement was to renegotiate the treaty in question and to obtain the agreement of the other party to the modification of a particular provision. Such reservations could therefore be considered tantamount to a refusal to accept the treaty as drafted. Interpretative declarations that were not aimed at changing the legal effect of a treaty should be admissible. It was nonetheless true that, as the Commission had indicated, a number of elements helped to blur the necessary distinction between reservations and interpretative declarations. Given the fact that most States considered reservations to bilateral treaties to be impermissible, the Commission must further clarify the distinction between the two types of interpretative declaration and their legal consequences, especially in relation to bilateral treaties.

38. **Mr. Alabrune** (France) said that the French term "directives" used to describe the Commission's draft guidelines was not satisfactory because it suggested compulsory rules. The term "lignes directrices" would be more appropriate in the French text.

39. He welcomed the Commission's efforts to define across-the-board reservations, the usefulness of which had been shown in practice. They must be distinguished from general reservations, which made any commitment a hollow one.

40. While satisfied with the substance of the draft guidelines on object of reservations and statements purporting to discharge an obligation by equivalent means, he wondered if it was appropriate for them to be in the form of guidelines. The draft guidelines on statements purporting to limit the obligations of their author and statements purporting to discharge an obligation by equivalent means could be deleted and become new paragraphs in the draft guideline on object of reservations. A simple reference could then be made in the related commentary to statements purporting to undertake unilateral commitments.

41. His delegation was particularly interested in the draft guideline on the definition of interpretative declarations because experience had shown that there were difficulties in that area. It was therefore very worthwhile for the Commission to better define that issue. The method adopted by the Special Rapporteur and the criterion of intent which had been chosen to define interpretative declarations were quite satisfactory because they allowed a distinction to be made between interpretative declarations and reservations. The definition of an interpretative declaration must however specify the moment at which the State or international organization making such a declaration was required to formulate it. It would be preferable to confine such declarations to a limited period of time, which could be the same as that for formulating a reservation. Removing any mention of a limited period of time from the definition of an interpretative declaration

would, moreover, run the risk of weakening the time element characteristic of reservations. That time element was just as necessary in the case of conditional interpretative declarations.

42. He agreed that statements of non-recognition, by which certain States indicated that their participation in a treaty did not imply recognition of an entity as a State, were outside the scope of the Guide to practice. Such statements did not purport to exclude or modify the legal effect of particular provisions of the treaty but sought rather to deny the entity in question the capacity to make a commitment, and therefore to preclude any treaty relationship with it. Statements of general policy which did not have a sufficiently close link with the treaty to which they referred must also be excluded from the scope of the Guide to practice.

43. The draft guideline on statements concerning modalities of implementation of a treaty at the internal level, in its current form, posed a real problem. The text stated that such statements were outside the scope of the Guide to practice only insofar as they had no effect on the rights and obligations of their author vis-à-vis the other contracting parties. Yet in cases where the treaty in question made specific modalities of implementation compulsory for the internal legal systems of States parties, such statements could constitute veritable reservations, even if the desire to modify or exclude the legal effect of certain provisions of the treaty was not immediately apparent. It would therefore be more prudent to adopt the position that a statement concerning modalities of implementation of a treaty at the internal level was strictly for information purposes if, on the one hand, it did not purport to have any effect on the rights and obligations of the State which formulated it and if, at the same time, it was incapable of having such effect.

44. Finally, in relation to "reservations" to bilateral treaties, he believed that statements of that type did not constitute reservations because they did not lead to any modification or exclusion from legal effect of certain provisions but rather modified the treaty itself. The title of the draft guideline should be modified to indicate clearly that it dealt with statements aimed at modifying a bilateral treaty.

45. **Mr. Magnuson** (Sweden), speaking on behalf of the Nordic countries, noted the welcome tendency among States to reduce the number of reservations attached to human rights instruments. Another positive development was that some States had made their reservations more precise. Unquestionably, the consistent policy of objecting to reservations or to modifications to reservations which might undermine the integrity of a treaty had played an essential role in promoting that tendency.

46. At the current stage of discussions, the Nordic countries found the draft guidelines developed by the Commission acceptable, with one exception. According to draft guideline 1.1.3 (Reservations having territorial scope), a unilateral statement by which a State purported to exclude the application of a treaty or some of its provisions to a territory to which that treaty would be applicable in the absence of such a statement, constituted a reservation. Yet the legal situation with respect to the various parts of a territory varied considerably between States, as did the competence of the central Government to legislate for autonomous regions. Since there were also various kinds of treaties, it was not at all obvious that a statement of the kind referred to in guideline 1.1.3 constituted a reservation. Some treaties explicitly forbade reservations. If a unilateral statement of the kind referred to in guideline 1.1.3 was characterized as a reservation, it could have the unfortunate effect of preventing some States from ratifying the treaty in question. The Nordic countries were of the view that no decision as to whether or not such a statement was a reservation could be made without first analysing the object of the treaty and the effect that the statement would have on its application. It was very probable that after such an analysis it would become obvious that some statements having territorial scope could be considered interpretative declarations and others reservations.

47. The Vienna regime regarding reservations had gaps, particularly in the area of inadmissible reservations, reservations incompatible with the object and purpose of the treaty or other prohibited reservations. Thus the effect of an objection to a reservation was that the provisions to which the reservation related did not apply between the two States, which was often the opposite of what the objecting State wanted, particularly in the sphere of human rights. Finally, the admissibility of reservations seemed to be attracting growing interest among States, and the Nordic countries were disappointed that that issue would not be dealt with until 2001. He therefore encouraged the Special Rapporteur to begin study of the issue of inadmissible reservations as soon as possible, in particular with regard to the doctrine of severability.

The meeting rose at 5.20 p.m.