United Nations A/C.6/68/SR.21

General Assembly
Sixty-eighth session

Official Records

Distr.: General
22 November 2013

Original: English

Sixth Committee

Summary record of the 21st meeting
Held at Headquarters, New York, on Friday, 1 November 2013, at 10 a.m.

Chair: Mr. Kohona . . . . . (Sri Lanka)

Contents

13-54282 (E)

The meeting was called to order at 10.05 a.m.

Statement by the President of the International Court of Justice

1. **The Chair** welcomed the President of the International Court of Justice, noting that the Court was the principal judicial organ of the United Nations and that its activities in the peaceful settlement of disputes were crucial to the advancement of the rule of the law at the national and international levels.

2. **Mr. Tomka** (President of the International Court of Justice), speaking on the topic of strengthening the role and compulsory jurisdiction of the Court in the international community, said that the Court's jurisdiction to proceed with the peaceful settlement of disputes between States was subject to the consent of States parties appearing before it, a principle that was in line with the philosophy that had led to the inception of the League of Nations and, subsequently, the United Nations. That principle was particularly important for States Members of the United Nations, as they were ipso facto parties to the Court's Statute and, by virtue of their obligations under the Charter of the United Nations, had undertaken to settle their international disputes peacefully.

3. The Court's jurisdiction *ratione materiae* was not limited: adjudication by the Court was an increasingly attractive option for the pacific resolution of maritime or land boundary disputes and disagreements over treaty interpretation, environmental law, sovereignty over maritime features, the protection of living resources, human health and many other fields. An increasing number of cases had potential consequences for the conservation of the natural environment and related issues, such as the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, in which the Court had handed down its judgment in 2010; the ongoing case concerning *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*; and the case concerning *Aerial Herbicide Spraying (Ecuador v. Colombia)*, which had recently been discontinued because the parties had reached an agreement to settle their dispute. Although no Court judgment had ultimately been necessary in that case, both parties had praised the Court for the time, resources and energy it had devoted to it and had acknowledged that reaching a settlement would have been difficult, if not impossible, but for the involvement of the Court.

4. There were several bases for the Court's jurisdiction over a dispute, one of which was a special agreement — *compromis* in French — under which disputing States decided to submit their dispute jointly for adjudication by the Court, thereby also circumscribing the scope of the dispute. To date, some 18 cases had been brought before the Court on that basis, including the case concerning the *Frontier Dispute (Burkina Faso/Niger)*, on which the Court had handed down its judgment in April 2013. A special agreement was the most effective way to bring a dispute before the Court, because usually there was no challenge to the Court's jurisdiction in such cases, which meant that the Court could focus from the beginning on the merits of the case. The Court's jurisdiction could also be triggered by a compromissory clause in a multilateral convention or bilateral treaty; in such cases it was confined *ratione materiae* to disputes concerning the interpretation or application of the convention or treaty in question. More than 300 instruments contained such clauses. More importantly, Article 36, paragraph 2, of the Court's Statute provided that States could declare that they recognized as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes. Such a declaration, which engendered reciprocal effects, was to be deposited with the Secretary-General of the United Nations. States making such declarations were, of course, free to determine their scope by, for example, excluding certain types of disputes.

5. The 2005 World Summit Outcome (General Assembly resolution 60/1) had recognized the important role of the International Court of Justice in adjudicating disputes among States and the value of its work and had called upon States that had not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute. In the eight years since the adoption of that document, the Governments of six countries — Dominica, Germany, Ireland, Lithuania, Timor Leste and the Marshall Islands — had issued declarations recognizing the jurisdiction of the Court as compulsory, and the Government of Japan had issued a new declaration replacing the one issued in 1958, bringing the total number of declarations to 70. The Secretary-General had also issued a call for States to recognize the Court's jurisdiction at the high-level meeting of the General Assembly on the rule of law at the national and international levels in 2012, which had

been reiterated in the Declaration adopted at that meeting (General Assembly resolution 67/1). His initiative had served to bolster the pre-eminence of the Court as the principal judicial organ of the United Nations and the foremost judicial institution entrusted with the peaceful settlement of disputes and the promotion of the rule of law at the international level. In that connection, the Manila Declaration on the Peaceful Settlement of International Disputes, among other documents, stated that referral of a dispute to the Court should not be considered an unfriendly act.

6. The idea of State consent had been regarded as a prerequisite for international dispute resolution mechanisms since the embryonic stages of the current system and had been very much on the minds of the framers of the 1907 Convention for the Pacific Settlement of International Disputes, although at that time it had been more closely associated with arbitral decision-making. However, the judicial settlement of international disputes, as a means to attain the paramount objective of settling inter-State differences peacefully following the First World War, had gained traction in the context of the preparatory work for the Permanent Court of International Justice, the predecessor of the current Court; thus the members of the nascent League of Nations had committed themselves to that principle. A proposal to institute the compulsory jurisdiction of the Permanent Court of International Justice had been put forward at the time of elaboration of the first draft for the establishment of that Court. Under the proposal, States would have remained unfettered in their choice of whether or not to become parties to the Statute of the Permanent Court, but their acceptance of it would have been synonymous with both prior determination of the existence of any legal dispute arising subsequently and, where applicable, compulsory adjudication of such dispute by the Court. Ultimately, however, the prevailing view in the Council of the League of Nations had been that, while adherence to the Permanent Court should be actively promoted, States should nonetheless retain some degree of discretion in subjecting themselves to judicial settlement of their disputes. Thus the Statute of the Permanent Court had contained an optional clause on compulsory jurisdiction that was similar to Article 36 of the current Court's Statute, but which differed in that the mechanism for recognition by States of the compulsory jurisdiction of the Permanent Court was acceptance of the optional clause in conjunction with the Protocol of Signature of the Court's Statute rather than a declaration deposited with the Secretary-General.

7. The debate over compulsory jurisdiction had arisen again when the groundwork for the establishment of the International Court of Justice was being laid. While the framers of the current Court had decided to establish a completely new judicial institution, they had nonetheless sought inspiration from the experience of the Permanent Court. In the run-up to the San Francisco Conference, two versions of Article 36 of the Statute had been formulated. One had provided that the Members of the United Nations and States parties to the Statute recognized as among themselves the jurisdiction of the Court as compulsory ipso facto and without special agreement in any legal dispute concerning the interpretation of a treaty; or any question of international law; or the existence of any fact which, if established, would constitute a breach of an international obligation; or the nature or extent of the reparation to be made for the breach of an international obligation. However, concerns had been voiced that too rigid a jurisdictional scheme might deter some States from becoming parties both to the Statute of the Court and to the Charter of the United Nations, and also that the imposition of compulsory jurisdiction might unduly restrict the power of States to make reservations *ratione temporis* to their declarations recognizing the Court's jurisdiction as compulsory. Article 36, paragraph 2, of the Statute had therefore been almost identically modelled on the text governing the jurisdiction of the Permanent Court, which represented a more flexible approach.

8. The fact that the mechanism for making optional declarations had been carried over to the newly established United Nations system was in line with other features of the Charter adopted in 1946. Despite the institutional discontinuity stemming from the establishment of an entirely new Court and governing apparatus, the framers of the Charter had ensured jurisprudential continuity by modelling the new Court's Statute on that of the Permanent Court. The International Court of Justice had also developed the jurisprudence of the Permanent Court through its own work. Taken together, the two institutions had over 90 years of accumulated experience in the peaceful settlement of international disputes. The current Court had also benefited from the corpus of procedural law elaborated by its predecessor, which was important for the sound administration of international justice. The

founders of the United Nations system had confirmed that State consent should remain sacrosanct in the selection of avenues for the peaceful resolution of international disputes: the wide margin of choice afforded States in that regard was enshrined in Article 33, paragraph 1, of the Charter.

9. While the Charter and, by way of integration, the Statute of the Court both maintained the jurisdictional system established under the Permanent Court of International Justice, the essence of the Charter nonetheless hinged on a broader conception of the international community, where both States and international institutions were committed to fundamental human rights standards, human dignity and equality, and the fate of the individuals committed to their charge. Equally paramount was the commitment to the international rule of law, which, coupled with the maintenance of international peace and security, had paved the way for the evolution of an international community composed of various actors, all commonly invested in bettering the lives of peoples throughout the world. Enhancement of the role of international law, and the international rule of law more broadly, could strengthen those objectives and, more importantly, ensure the transition to more just societies. The International Law Commission had similarly encapsulated the commitment to the international rule of law in article 14 of its 1949 Declaration on Rights and Duties of States, which stated that every State had the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State was subject to the supremacy of international law.

10. Against that backdrop, the Court was vested with the responsibility of delivering international justice by peacefully settling bilateral disputes referred to it by States. That responsibility was inextricably linked to the obligation of all Member States to settle their disputes by peaceful means. Parties were increasingly placing their confidence in the Court to reach a well-reasoned and just outcome; indeed, the Court had delivered more judgments over the past 23 years than during the first 44 years of its existence and had handled cases on a wide variety of subjects. For example, it had developed a solid reputation for its work concerning the delimitation of maritime boundaries: 15 such cases had been referred to the Court to date. Its judgment in the case concerning *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* had been adopted unanimously and, uniquely in the Court's history, without any opinions or declarations by individual judges appended to the decision. Moreover, the judgment had succinctly explained maritime delimitation principles and jurisprudential developments, thereby consecrating the basic delimitation methodology under international law. It was gratifying that other international courts and tribunals had followed the Court's jurisprudence in that area; for example, the International Tribunal for the Law of the Sea had relied heavily on the aforementioned judgment when it had handed down its own first judgment on maritime delimitation in March 2012, in the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*.

11. As a corollary to the broader conception of the international community, the concept of the rule of law, in order to have meaningful force, must translate into the availability of independent and impartial courts where disputes could be adjudicated and rights asserted. At the international level, that role was best reserved for the International Court of Justice, and it was high time to consider ways of enhancing it. One way would be to encourage more States to recognize the compulsory jurisdiction of the Court. Some regional conventions provided that signatory States must accept that jurisdiction when acceding to the convention in question. For example, the European Convention for the Peaceful Settlement of Disputes enshrined such a mechanism, which had been accepted by the Court as the jurisdictional basis for the case concerning *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*. However, only 14 out of 47 States members of the Council of Europe had ratified that Convention; similarly, the American Treaty on Pacific Settlement (Pact of Bogotá), which also conferred jurisdiction on the Court, had only 14 ratifications. Moreover, membership of the United Nations did not automatically entail recognition of the Court's compulsory jurisdiction: the 70 States that had issued the necessary declaration pursuant to Article 36, paragraph 2, of the Court's Statute represented only just over a third of the Organization's membership.

12. Negotiation was by far the best means of resolving differences between States. As the Court had declared in its judgment in the *North Sea Continental Shelf* cases, which it had recalled in the case

concerning the *Gabčíkovo Nagymaros Project (Hungary/Slovakia)*, parties were under an obligation so to conduct themselves that negotiations were meaningful, which would not be the case when either of them insisted on its own position without contemplating any modification of it. Disputes concerning competing claims to territory or maritime features or zones could be particularly volatile. However, in some cases, the mere possibility of recourse to the Court might encourage disputing States to work for a mutually agreeable outcome without the need for the Court's involvement. Should negotiations fail, the Court was available to assist and could help defuse tensions and ultimately normalize relations between the disputing parties. Even when a case had been referred to the Court, the parties remained free to pursue negotiations, and in some cases the prospect of the Court's adjudication might encourage them to reach a settlement, as in the case concerning *Aerial Herbicide Spraying (Ecuador v. Colombia)*.

13. There was no doubt that the International Court of Justice remained an important agent for strengthening and upholding the rule of law at the international level, mainly in the context of inter-State relations. In particular, the Court fulfilled the vital function of determining the international law applicable to a case and rendering justice between disputing States. He appealed to Committee members, as eminent advisers working specifically in the field of public international law, to promote both dispute settlement by the Court and greater recognition of its compulsory jurisdiction as ways to achieve peaceful conflict resolution and more harmonious inter-State relations. If such recognition was politically difficult, another option was for the two parties to a dispute to conclude a special agreement to bring that particular dispute before the Court.

14. **Mr. Momtaz** (Islamic Republic of Iran) said that the President of the Court had rightly emphasized the fact that the Court's jurisdiction was subject to the consent of the parties to the dispute in question. However, a decision by the Court might have an effect on the legal rights and position of a State that was not a party to the dispute, and under the Court's Statute such a State could request permission to intervene in the case. He would like to know why, in certain cases, third States did not request permission to intervene.

15. Moreover, given that in recent years the Court had somewhat moved away from the jurisprudence established in the case concerning the *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)*, particularly in advisory proceedings, he wondered what measures were taken by the Court to ensure that the rights of parties to a dispute were not called into question in advisory proceedings on the same subject.

16. **Mr. Tomka** (President of the International Court of Justice) said that the question of third States was more likely to arise in a bilateral dispute — in other words, a contentious case — than in advisory proceedings. Under Article 59 of the Statute, the Court's decisions were binding only on the parties to the dispute and in respect of the particular case to which the decision pertained. Under Article 63, a third State had the right to intervene in a case whenever the construction of a convention to which it was a party was in question; if it used that right, the construction given by the judgment would be equally binding upon it. However, in adjudicating disputes, the Court was always careful to avoid judgments that would affect the interests or rights of third States — for example, in determining maritime boundaries — and a statement to that effect was always included in the reasoning of the judgment.

17. In advisory proceedings, all States entitled to appear before the Court were given the opportunity to present written or oral statements and to comment on the statements presented by others. Advisory opinions were not binding and therefore did not create rights or obligations, although they did have some weight because of the Court's status as the principal judicial organ of the United Nations. The Court had never declined to give an advisory opinion when it had been requested to do so, provided that its jurisdiction in the case was established, since it viewed such opinions as a contribution to the work of the Organization. The Permanent Court of International Justice had declined only once to provide an advisory opinion, in the case concerning the *Status of Eastern Carelia*, on the grounds that, by giving an opinion, it would have had to pronounce on a bilateral dispute in which one of the parties was not a party to the Court's Statute. The International Court of Justice had taken great care to ensure that no advisory opinion issued by it affected the rights or obligations of a particular State.

18. **Mr. Ney** (Germany) said that the International Court of Justice made a crucial contribution to the

maintenance of international peace and security. Paradoxically, one of the new challenges for the Court was in fact a positive development: in recent years the number of cases submitted to the Court had been rising continuously, which demonstrated that States were increasingly willing to use the Court for the settlement of their disputes, and that the Court was trusted and held in high esteem by the international community. His Government had made a declaration in 2008 recognizing the Court's jurisdiction as compulsory, pursuant to Article 36, paragraph 2, of the Court's Statute. He called on States that had not yet made such declarations to follow suit, thus enabling the Court to enhance its function as a prominent facilitator of peaceful dispute resolution.

19. **Mr. Tomka** (President of the International Court of Justice) thanked the representative of Germany for his remarks and welcomed his call on Member States that had not yet done so to make declarations under Article 36 of the Statute. Certain regions of the world, such as Latin America and Western Europe, had traditionally been more open to referring disputes for judicial settlement. Since the major political changes of 1989, seven members of the Group of Eastern European States had made declarations, along with 21 out of 28 European Union member States; he hoped that the remaining seven European Union countries would consider making a declaration. Some 22 out of 54 countries in the African Group had made declarations, while in the Asia-Pacific Group — which represented a continent with somewhat different traditions, where litigation was not customary — 8 countries out of 53 had made declarations.

20. **Ms. Lijnzaad** (Netherlands) said that her country, as the host State of the Court, had always strongly supported efforts to achieve broader acceptance of the Court's compulsory jurisdiction, and was pleased that the issue had been taken up at the high-level meeting of the General Assembly on the rule of law at the national and international levels the previous year. She wondered what was discouraging States from accepting compulsory jurisdiction, since those that had accepted it were generally confident in their decision and did not have any cause to be concerned about it. She asked what might be the best way to promote compulsory jurisdiction — perhaps by describing it as a safety valve in the international system.

21. It seemed contradictory for a State that had not accepted the Court's compulsory jurisdiction to put forward a candidate for the position of judge at the Court, however qualified that candidate might be. If a State had confidence in a particular lawyer to contribute to the Court's work, it should also have confidence in the Court itself. Perhaps that was a factor that should be taken into account when considering candidates. However, that was purely her personal view.

22. **Mr. Tomka** (President of the International Court of Justice) said that almost 50 per cent of the Court's judges — 7 out of 15 — were from States that had a declaration in force accepting the Court's compulsory jurisdiction. However, those States without a declaration in force were not necessarily averse to accepting the Court's jurisdiction in particular circumstances, either through compromissory clauses in treaties or conventions, or by signing a special agreement submitting a bilateral dispute to the Court. There were also cases in which a State had accepted the Court's jurisdiction after an application instituting proceedings had been filed against it, in accordance with the rule of *forum prorogatum*. He shared the view that States should not be afraid that accepting the Court's jurisdiction would immediately lead to a flood of lawsuits from other States; Governments referred disputes to the Court only after giving the matter serious consideration and after making efforts to settle the dispute bilaterally first. By way of example, of the seven countries of Central and Eastern Europe that had recognized the Court's jurisdiction after the political changes of 1989, not one had been brought before the Court to date.

23. States from some regions seemed to be more cautious than others about accepting the Court's jurisdiction and yet had no difficulty in accepting bilateral investment treaties that provided for compulsory arbitration, whereby investors could bring foreign Governments before arbitration tribunals. There were currently some 500 such pending cases around the world, and substantial sums were at stake. The Court's jurisdiction should not, therefore, be seen as a sword of Damocles hanging over States. Its approach was to resolve disputes on the basis of evidence and legal arguments in such a way as to help both parties move forward.

24. **Mr. Şahinol** (Turkey) said that, when States were invited to present their views in advisory proceedings, those that chose not to do so were excluded from commenting subsequently on the statements made by others, even if those statements concerned them. The

Court therefore took into account only the views of States that had chosen to present their views at the first opportunity. It would be appreciated if States that did not present their views at that stage still had the opportunity to do so later, so that the Court's advisory opinions were based on the full spectrum of States' views.

25. **Mr. Tomka** (President of the International Court of Justice) said that advisory proceedings were governed by basic provisions in the Court's Statute and more detailed provisions in the Rules of Court; in addition, the Court applied mutatis mutandis certain provisions relating to contentious cases. He was not aware of any advisory opinions that were flawed on the basis that a State had been denied the opportunity to present its views. In advisory proceedings, the Court invited all 193 States Members of the United Nations, including those that had not recognized the Court's jurisdiction, to submit written statements to the Court by the specified deadline; those statements were then communicated to all States that had submitted similar statements so that they could comment on them. The procedure was based on the sound administration of justice and equal treatment of those who wished to participate in advisory proceedings.

26. **Mr. Kittichaisaree** (Thailand) said that the Court had been criticized in the case concerning *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)* because, in its judgment of July 2012, it had not ruled on the question posed by Belgium as to whether Senegal had an obligation to extradite the alleged offender to Belgium. He would like to know why the Court had left that question open.

27. **Mr. Tomka** (President of the International Court of Justice) said that, in the judgment in question, the Court had stated clearly that Senegal was under an obligation to institute proceedings and that only if it did not do so would it be obliged to extradite the alleged offender. To his knowledge, the parties in the case had been satisfied with the Court's decision.

28. **Mr. Fife** (Norway) said that his delegation agreed that efforts should be made to encourage States that had not yet done so to make declarations accepting the Court's compulsory jurisdiction. In financial terms, the cost of the Court was minimal compared to the amounts spent by the United Nations and individual Member States on military, peacekeeping and peacebuilding activities, and the Court also generated long-term dividends in the form of international peace, stability and the rule of law. In order to ensure that all States had equal access to the Court, the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice should be fully utilized, and contributions to the Fund should be encouraged.

29. **Mr. Tomka** (President of the International Court of Justice) said that the Court was indeed highly cost-effective: the average cost of adjudicating one case was around $5 million, which was far less than the cost to the Organization of peacekeeping missions that became necessary when unresolved disputes degenerated into hostilities. It was also much less costly for States to bring disputes before the Court than to use ad hoc arbitrations. States parties to the United Nations Convention on the Law of the Sea could choose, by means of a written declaration, to have disputes settled by the International Court of Justice or the International Tribunal for the Law of the Sea; in the absence of such a declaration, or if two parties to a dispute had not accepted the same procedure for dispute settlement, an arbitral tribunal constituted under annex VII to the Convention automatically had jurisdiction to hear the case, although occasionally such a tribunal concluded that it actually had no jurisdiction in the case concerned, as in *Southern Blue Fin Tuna (New Zealand v. Japan)*. Very few arbitral proceedings had been conducted or were pending pursuant to special agreements between two States; one notable exception was the arbitration process currently under way between Croatia and Slovenia under the auspices of the European Union.

30. **Mr. Mwamba Tshibangu** (Democratic Republic of the Congo) said that his country had not only issued a declaration recognizing the compulsory jurisdiction of the International Court of Justice but had also been a party to a dispute adjudicated by the Court, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*. Negotiations were currently under way, as encouraged by the Court in its judgment, with a view to finding a solution that was satisfactory to both parties.

31. He requested clarification of the President's remarks concerning disputes between investors and States, since Article 34 of the Court's Statute provided that only States could be parties to a case.

32. **Mr. Tomka** (President of the International Court of Justice) said that he appreciated the swift action

taken by the Government of the Democratic Republic of the Congo to comply with the Court's finding that compensation was due to the Republic of Guinea in the case concerning *Ahmadou Sadio Diallo*.

33. It was, of course, true that only sovereign States had access to the Court under Article 34 of the Statute; he had been referring in his previous remarks to bilateral treaties for the protection and promotion of investments, under which Governments unreservedly accepted the competence of investment arbitration tribunals to settle disputes. In almost all such cases, proceedings were instituted by the investor, whether a private individual or a company; he knew of only one case in which a Government had instituted proceedings. If an investor considered that its rights under international law had not been respected by a foreign Government, the investor's country of nationality would have to lodge a claim on the basis of diplomatic protection. However, the majority of bilateral treaties, and also the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, ruled out the possibility of diplomatic protection in such cases.

34. **Ms. Telalian** (Greece) said that her country had accepted the Court's compulsory jurisdiction under Article 36, paragraph 2, of the Statute and agreed that States that had not yet done so should be encouraged to follow suit. Some States' declarations were accompanied by reservations that placed restrictions on the Court's competence. She asked whether that issue had ever been considered by the Court and, if so, what its position was in that regard.

35. **Mr. Tomka** (President of the International Court of Justice) said that the Court had not discussed the issue in general terms, but that it was obliged to discuss it if it arose in the context of a particular case. For example, in the pending case concerning *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Japan had raised objections on the basis of a provision in Australia's declaration of recognition of the Court's jurisdiction; the Court would have to consider those objections and rule on them in due course.

36. Ideally, States would recognize the Court's jurisdiction unconditionally, but it was preferable for them to recognize it with reservations than not to recognize it at all. Some declarations excluded from the Court's jurisdiction matters that, in the Government's view, fell within domestic jurisdiction, which seemed to defeat the purpose of issuing a declaration. However, other reservations were more reasonable: for example, some States had issued a declaration accepting the Court's jurisdiction in disputes with any other State that had made a similar declaration at least 12 months prior to the filing of the application bringing the dispute before the Court. That prevented States without a declaration in force from issuing a declaration solely for the purpose of lodging an immediate application against a State with which a dispute had arisen. Provisions stipulating that a declaration did not apply to disputes that were subject to other agreed settlement mechanisms were also reasonable.

37. **Mr. Rietjens** (Belgium) said that his Government had been satisfied with the Court's response to its questions on the application of the obligation to extradite or prosecute (*aut dedere aut judicare*) in the case previously referred to. The Court had clarified that, where the obligation applied, a State was entitled not to extradite the person in question provided that it prosecuted him or her. When the Court pronounced on such questions of law, it was performing an important educational function as well as helping the parties to a dispute to find a solution. His Government was grateful to the Government of Senegal for agreeing to submit the case in question to the Court and for acting without delay to give effect to the Court's judgment. His Government, for its part, had provided all the necessary assistance in that regard; thus a dispute had been transformed into strengthened cooperation.

38. **Mr. Tomka** (President of the International Court of Justice) thanked the representative of Belgium for his remarks and expressed appreciation that the majority of the Court's judgments had been duly applied by the parties in question.

Agenda item 81: Report of the International Law Commission on the work of its sixty-third and sixty-fifth sessions (*continued*) (A/66/10, A/66/10/Add.1 and A/68/10)

39. **Ms. Lijnzaad** (Netherlands), commenting on the topic "Reservations to treaties", said that the Guide to Practice on Reservations to Treaties prepared by the former Special Rapporteur, Mr. Alain Pellet, was an impressive piece of work, even though her delegation did not necessarily agree with all the views expressed in it. Her delegation had supported the Commission's

intention from the outset to take a practical approach to reservations that took account of the fact that the primary users of the Guide would be government lawyers and officials of international organizations dealing with reservations in their daily work. The relevance of the Guide should be measured by its practical utility. The starting point should be the relevant provisions of the Vienna Convention on the Law of Treaties, and the flexibility of that system should be reflected. It should be borne in mind that the Guide was just that — a guide — particularly where it contained elements that were not based on practice. It was likely that the Guide would lay the groundwork for the establishment of new State practice and perhaps eventually for customary international law.

40. Mr. Pellet's systematic approach had crystallized a number of contemporary issues in the reservations debate. Her delegation appreciated in particular the clarity of the guidelines on the periodic review of the usefulness of reservations, the partial withdrawal of reservations and the recharacterization of an interpretative declaration. Another important step was the indication of how to determine the object and purpose of a treaty, an elusive concept in the law of treaties. However, she reiterated her delegation's disagreement with the content of guideline 1.1.3 (Reservations relating to the territorial application of the treaty) and endorsed the comments made on that issue by the representatives of New Zealand and the United Kingdom.

41. One of the main problems addressed by the Commission had been whether the invalidity of a reservation would mean that the author of the reservation would be bound by the treaty without the benefit of the reservation, or would not be bound by the treaty at all. Her delegation welcomed the approach taken in guideline 4.5.3, but noted that the expression "at any time" in paragraph 3 might cause confusion, as it might be taken to mean that the author of a reservation could change its position as a party after the expression of its consent to be bound.

42. It was regrettable that there was no guideline suggesting that it would be desirable to consider formulating specific provisions on reservations during the negotiation of a new instrument. That would have been a logical addition to the Guide. It was also regrettable that the Guide did not underline the role of the depositary as the guardian of the integrity of a treaty.

43. Her delegation remained concerned about guideline 2.3.1 and the related guideline 4.3.2 on the late formulation of reservations. It was true that reservations communicated to the depositary some days or even weeks after the expression of consent to be bound were usually considered valid, as the lateness was supposedly due to administrative oversight, although that might be a liberal interpretation of the facts. However, her delegation strongly disagreed with the view that a late reservation should be deemed accepted unless one State party objected to it. There was no State practice supporting that principle, and the guideline in question would be a development of law, and not necessarily a progressive one. Her Government would not wish a reservation formulated in contravention of article 23, paragraph 1, or article 2, paragraph 1 (d), of the Vienna Convention on the Law of Treaties to be considered accepted, even if did not object to it.

44. Her delegation commended the Commission for its efforts to clarify the concept of interpretative declarations, in particular by drawing up guidelines that made it possible to distinguish between interpretative declarations proper and disguised reservations, a question that government lawyers were regularly called upon to assess. However, guidelines 2.9.1 and 2.9.2, on approval of and opposition to interpretative declarations, somewhat overshot their commendable goal, and their introduction risked compromising the practical relevance of the Guide. Even though they contained only definitions, the mere suggestion of the possibility of approval of or opposition to interpretative declarations lessened the difference between reservations and interpretative declarations. It was far from common practice for States parties to approve or oppose interpretative declarations. Presumptions about the silence of States with regard to such declarations or their conduct on the basis of such declarations belonged to other areas of international law and should be left well alone in the Guide.

45. Her delegation appreciated the Commission's attention to the reservations dialogue at the regional level in Europe and its explanation of the dialogue as a way of facilitating better understanding of reservations and their impact. The dialogue was a useful tool that benefited from the flexibility of diplomatic discussions; indeed, it was effective in downsizing far-reaching reservations or ensuring their withdrawal. However,

the proposal to establish an observatory on reservations within the Sixth Committee was ill-advised, since the Committee was a political forum that did not provide the required setting for the dialogue to function properly. The effectiveness of the two existing reservations dialogues was largely dependent on the active participation of a limited group of States that shared a unity of purpose and determination, operating in an informal setting and guided by confidentiality and mutual respect. Initiatives inspired by those currently existing within European regional organizations were not suitable for transposition to the United Nations level. Her delegation could not, therefore, support the recommendation set out in part II of the annex to the Guide.

46. The Commission's proposal regarding flexible dispute settlement on reservations seemed unrealistic. It was difficult to see how it related to the essence of contractual relations. There was, after all, no obligation to accept reservations, even if the Vienna Convention seemed to suggest acceptance, and the onus was on the reserving State to ensure that its reservation would be acceptable to other States. Consequently, there was no need for a mechanism to settle differences of view; such differences might lead a State not to accept a reservation, but that in itself did not constitute a dispute.

47. **Mr. Mahnic** (Slovenia) said that the Guide to Practice on Reservations to Treaties and its annex on the reservations dialogue would be of great help to Governments in dealing with reservations in their daily practice. The Guide should be endorsed by the General Assembly in the near future, with a view to ensuring its widest possible dissemination and use in practice. Since its acceptability and effectiveness would depend greatly on its conformity with recent practice and the existing rules of the Vienna Convention on the Law of Treaties, his delegation suggested further deliberation on the question of the late formulation of reservations (guideline 2.3), especially with respect to cases in which none of the other contracting States and contracting organizations opposed the late formulation of the reservation. Such a provision could eventually lead to non-transparent and confusing practice; as a rule, reservations needed to be formulated in conjunction with a State's expression of consent to be bound by a given treaty. In addition, with regard to guideline 4.2.1 (Status of the author of an established reservation), he questioned whether depositaries did, in practice, wait 12 months for a reservation to be established before they treated the author of the reservation as a contracting State to the treaty in question.

48. The topic of protection of persons in the event of disasters was one of the most pertinent under the Commission's scrutiny, as it dealt with an important area of international law and practice that had not yet been codified in a comprehensive manner at the international level. The 18 draft articles prepared so far were consistent with the Commission's main aim, which was to protect the lives and basic human rights of disaster victims while remaining mindful of the principles of sovereignty and non-intervention. It was extremely important to maintain that delicate balance if the draft articles were to gain global acceptance in the future.

49. With regard to draft articles 5 ter and 16, his delegation welcomed the fact that the Commission had dealt with aspects of prevention, including disaster risk reduction, since that corresponded to numerous current activities of the international community. Close cooperation was of paramount importance in risk reduction endeavours; his delegation therefore supported the explicit mention of the duty to cooperate in draft article 5. In addition, each individual State had a duty to reduce the risk of disasters by taking certain appropriate measures, as set out in draft article 16. That duty was based on the contemporary understanding of State sovereignty, which encompassed not only rights but also the duties of States towards their citizens and which provided that affected persons should not suffer unnecessarily for the sake of sovereignty. The duty to reduce the risk of disasters was also consistent with States' obligation to respect, protect and fulfil human rights, in particular the most fundamental human right, the right to life. Specifically, States had a duty to prevent disasters, to prepare for disasters within their territory, to take direct measures to minimize suffering immediately after a disaster and, above all, to request international humanitarian relief when national efforts were insufficient to protect the lives of victims. The Government of Slovenia had already adopted national legislation with the aim of implementing global risk reduction strategies.

50. Concerning the topic "Formation and evidence of customary international law", his delegation supported the approach suggested by the Special Rapporteur with

regard to the scope and possible outcome of the Commission's work. While it had been widely accepted that the existence of a rule of customary international law required that there should be a settled practice together with *opinio juris*, it was much less clear how such a rule was to be identified in practice. The proposed approach to the topic should fill in some of the lacunae in the understanding and application of customary international law, particularly on the part of non-international lawyers. Since the outcome of the work was expected to be of a practical nature, it should also include concrete examples of how best to identify rules of customary international law.

51. His delegation agreed that it would be preferable not to deal in detail with the issue of *jus cogens* under the topic. Although *jus cogens* could be part of customary international law and, as such, could be addressed within the topic, it nonetheless had inherently special characteristics. His delegation also shared the view that it was important to examine the relationship between customary international law and other sources of international law, such as treaty law. Such an analysis should focus not only on the effects of other sources on customary international law, but also the effects of the latter on the former, so as to offer a comprehensive understanding of the interplay between different sources of international law.

52. On the topic of provisional application of treaties, the Commission's objective should be to analyse as comprehensively as possible the mechanism of provisional application and its legal implications so that States could understand it better, both when they agreed to the mechanism at the time of concluding a treaty and when they implemented such treaties. As to the possible outcome of work on the topic, it was perhaps too early to decide whether guidelines, model clauses or some other form would be the most appropriate, since the decision would depend on the future work on the topic.

53. His delegation proposed that the Special Rapporteur should consider the question of succession of States in relation to the provisional application of treaties. An examination of the *travaux préparatoires* of the Vienna Convention on Succession of States in respect of Treaties and potential practice and doctrine in relation to it could contribute to an understanding of article 25 of the Vienna Convention on the Law of Treaties and to the analysis of provisional application in general. Moreover, such an approach would correspond to that adopted in relation to reservations to treaties, where the question of succession of States had been taken into consideration.

54. Three specific issues merited further consideration. First, his delegation agreed with the view that provisional application was not to be encouraged or discouraged, but should instead be understood as a legal concept with accompanying international consequences. Second, no great significance should be ascribed to the change in terminology from "provisional entry into force" to "provisional application", not least because it could be concluded from the *travaux préparatoires* of the Vienna Convention on the Law of Treaties that the *pacta sunt servanda* rule applied to both concepts, which would mean that, at least from that point of view, the two concepts were identical. Third, while his delegation agreed that the main focus of the Commission's work should be the analysis of provisional application from the perspective of international law, it also believed that States' decisions to use provisional application were often closely related to their constitutional rules and procedures. That was apparent from the discussions on article 25 of the Vienna Convention that had taken place at the United Nations Conference on the Law of Treaties, and the same view was also likely to emerge from the information provided by States in response to the Commission's request in chapter III of the report.

55. Thus the Commission must either expressly exclude such domestic law considerations from its work at the outset or decide how to include them. In the latter case, and in order to avoid an analysis of the domestic law of States, which the Special Rapporteur had correctly emphasized was not the Commission's task, the Commission could, for example, analyse the practice and implications of different legal limitation clauses in treaties under which provisional application was conditional on conformity with domestic or constitutional law.

56. With regard to chapter XII of the report, his delegation welcomed the Commission's decision to add the topics "Protection of the environment in relation to armed conflicts" and "Protection of the atmosphere" to its programme of work and noted with interest the inclusion of the topic of crimes against humanity in the long-term programme of work. As noted in annex B to the Commission's report, crimes against humanity, unlike war crimes and genocide, were not covered by a

treaty requiring States to prevent and punish such conduct and to cooperate in achieving that end. That gap in international law had been recognized for some time and was particularly evident in the field of State cooperation, including mutual legal assistance and extradition. All efforts should be directed at filling that gap; consequently, the Government of Slovenia, together with the Governments of the Netherlands, Belgium and Argentina, had launched an initiative for the adoption of a new international instrument on mutual legal assistance and extradition for the effective investigation and prosecution of the most serious crimes of international concern by domestic jurisdictions. In view of that initiative and the relationship between a potential convention on crimes against humanity and the Rome Statute of the International Criminal Court, the Commission's decision to include the topic required further consideration.

57. **Mr. Huang** Huikang (China) said that, while his delegation commended the efforts of the Special Rapporteur on reservations to treaties, it was struck by the serious questions raised by some delegations on the Guide to Practice on Reservations to Treaties and also by the "take-it-or-leave-it" attitude of the Special Rapporteur. Furthermore, the Commission's discussion of the topic and the final outcome of its work were a clear indication of the urgent need to improve its working methods. The Commission had taken 18 years to produce a Guide that was hundreds of pages long. It would be interesting to know how many Committee members had read through the Guide and how many intended to do so in the future. He had tried to read it from beginning to end but had failed to do so because he had found it to be of little help in his work on treaties.

58. With regard to reservations to treaties, the special rapporteur mechanism had proved to be beneficial in that a special rapporteur could steer the Commission's discussions towards valuable achievements on certain topics. However, a special rapporteur's involvement could also result in a great deal of time and effort being expended on an outcome that was of little benefit to Member States or was even disregarded by them. Judging by the discussion on reservations to treaties in the Committee, the Guide probably belonged to the latter category. Its value had been seriously challenged; as mentioned by several delegations, it might cause more problems than it solved. The fact that, after 20 years of deliberations, Member States still had many questions and criticisms on the outcome of the topic was a rare occurrence in the Commission's history.

59. The Guide's most distinctive feature was that it was over-elaborated with trivial details, with the result that it was pedantic and far removed from State practice. It tried to provide standard theoretical answers to all questions that had been or might be encountered in the field of reservations to treaties. However, many of those questions were based on hypothesis and either might never be encountered in States' treaty practice or would not be difficult to settle if they were encountered. While rules were certainly desirable in international law, it was practically impossible to legislate for every imaginable scenario. It was therefore important to develop legal principles that could provide practical guidance and leave room for their implementation at the same time. Existing regimes of treaty law offered many principles that embodied that balance well, such as the principle of autonomy. In that regard, some of the Guide's provisions lacked sufficient flexibility and balance; for instance, the approach of positive presumption adopted in guideline 4.5.3 with regard to the status of the author of an invalid reservation contravened the principle of autonomy.

60. Furthermore, with regard to the proposal for a reservations dialogue and the proposal for technical assistance and assistance in the settlement of disputes in the field of reservations, his delegation believed that reservations, together with the explanation and withdrawal of reservations, should be left to States parties themselves, in accordance with the principle of autonomy in the law of treaties. Since all States, in practice, were capable of addressing issues relating to reservations by themselves, the need for and feasibility of the two proposals required further study. His delegation therefore believed that the Committee should only take note of the Guide and refrain from taking any further action on it.

61. **Mr. Ney** (Germany) said that the Guide to Practice on Reservations to Treaties had already contributed to the clarification of legal debate on a number of issues and contained valuable practical guidance. For example, guideline 2.5.11, paragraph 2, contained the useful guidance that the partial withdrawal of a reservation could not be used as an opportunity to formulate a new objection. That might

appear to be a mere technicality, but the question frequently arose in practice. In time, all aspects of the Guide would come to be widely appreciated.

62. However, he reiterated his delegation's concerns regarding the Commission's conclusions as to the legal effect of impermissible reservations on treaty relations. Guideline 4.5.1 stated that a reservation that did not meet the conditions of formal validity and permissibility set out in parts 2 and 3 of the Guide to Practice was null and void, and therefore devoid of any legal effect. Considering an impermissible reservation null and void allowed for the reservation to be severed from a State's consent to be bound and permitted complete disregard for the reserving State's declaration.

63. The nullity and severability of an impermissible reservation was combined with the "positive presumption" proposed in guideline 4.5.3, paragraph 2, under which a State making an invalid reservation would be considered a contracting State without the benefit of its reservation. Nullity or invalidity as a consequence of impermissibility would be a new and drastic verdict on a State's reservation, especially where its permissibility was challenged on the grounds that it did not meet the compatibility test under article 19 (c) of the Vienna Convention on the Law of Treaties, which was open to wide interpretation and debate. The positive presumption, although rebuttable, amounted to a proposal for a new rule in international treaty law; it was clearly more than a mere guide to established practice within the framework of existing international law. His delegation maintained its firm position that the Commission's proposal of severability and positive presumption could not be deduced from existing case law or State practice as a general rule that was equally valid for all cases of impermissible reservations or with respect to all treaties. It remained reluctant to accept the Commission's conclusions as a new rule.

64. The positive presumption, as formulated in the Guide, could hamper treaty relations between States, and its effect was far less clear and straightforward than it appeared to be; it raised more questions than it aspired to resolve. First, the fact that it was rebuttable could lead to uncertainty as to whether or not a reserving State had become a party to a treaty. That was the case when doubt had been cast on the permissibility of the State's reservation and the State did not intend to be bound by the treaty without the reservation. Such uncertainty would continue until the permissibility or impermissibility of the reservation could be formally established. The question was what mechanism would and could lead to such clarification, since most treaties did not provide for an adjudicatory or monitoring body to deal with that kind of legal question.

65. Second, if it were established — possibly after an extended period of time — that a reservation was in fact impermissible and a State were to decide that it did not want to be bound without the reservation, what effect would that have on the contractual relationship of all parties concerned? Would the effect be retroactive, meaning that the State had never been a party to the treaty in question? What if it had been that particular State's consent to be bound that had allowed the treaty to enter into force? Would a contractual relationship ever have existed between the reserving State and the others? What would happen in the case of treaties that created a web of mutual obligations between States? Would the reserving State be entitled to a refund of its financial contributions made under the treaty?

66. Third, previous discussion on the matter had shown that the principle of consent underlying international treaty law demanded that the positive presumption had to be rebuttable; in other words, a reserving State had to be able to refuse to be bound by a treaty if its reservation turned out to be impermissible and hence invalid. As a consequence, every debate on the permissibility of a reservation could, and probably would, turn into a discussion about whether or not the reserving State was bound by the treaty. The debate on the content of treaty relations between parties to a treaty, as currently understood, was transformed by the Guide into a discussion on the status of the reserving State as a party. Some States had even expressed concern that a discussion on the permissibility of a particular reservation could be misused as an easy excuse to end treaty relations at any time.

67. His delegation acknowledged that the lack of legal clarity in dealing with impermissible reservations might be unsatisfactory, and that such reservations also had an undesirable effect on the integrity of the general application of human rights standards. Moreover, some existing treaties allowed for the type of approach proposed by the Guide, such as the European Convention on Human Rights. Nonetheless, his delegation was not currently willing to accept the solution offered by the Commission with regard to the

impermissibility of a reservation and the consequences thereof as a general rule of public international law.

68. His remarks were intended as a positive contribution to an ongoing debate and did not diminish his delegation's admiration for the tremendous achievement of the Commission and its Special Rapporteur on reservations to treaties.

69. **Mr. Salinas** (Chile) said that the Guide to Practice on Reservations to Treaties complemented the rules set out in the Vienna Conventions of 1969 and 1986 and was an appropriate form for the Commission's work on the topic. The purpose of the Guide was not to innovate but to serve as a complement to the Vienna Conventions with respect to issues on which they did not provide appropriate regulation or which had arisen following the application of those Conventions. An innovative approach could have given rise to a number of problems if, for example, the instrument adopted had not entered into force or had had only a small number of States parties; it could also have weakened existing rules in that regard.

70. The Commission's work did not always have to culminate in the adoption of a convention in order to be considered a success. The Special Rapporteur's reports and the commentaries to the guidelines were in themselves an important contribution to international law on the subject of reservations and would serve as a valuable reference tool for States. The fact that the work took the form of a Guide did not diminish the significance of its contribution to the development and improvement of international law in that area.

71. The extensive case-based approach taken in the Guide would provide guidance for the practice of States and help them resolve a number of situations that were not resolved by the Vienna Conventions. Over time, many of the guidelines could be consolidated and incorporated into international treaty law; some of them, insofar as they repeated the content of the Vienna Conventions, already constituted international law and were therefore binding.

72. His delegation attached particular importance to the guidelines that addressed the distinction between reservations and interpretative declarations and the regime applicable to the latter, an area which was not covered by the Vienna Conventions. It also welcomed the guidelines on late reservations, which, if subject to the strict requirements set out in the Guide, could become a relevant means of resolving the practical problems associated with the current restrictions on the times at which a reservation could be formulated. However, his delegation had difficulty with the concept of late objections as provided for in the Guide. Under the rules on reservations, a failure to object to a reservation within a certain period of time implied acceptance of the reservation with all the effects that such failure entailed. The fact that a late objection could be accepted but did not produce all the legal effects of an objection formulated within the specified time period did not provide the necessary legal certainty in that area.

73. The guidelines relating to the conditions for the validity of reservations were useful and should be borne in mind by States when they formulated reservations. His delegation agreed that the fact that a treaty provision reflected a rule of customary international law did not in itself constitute an obstacle to the formulation of a reservation to that provision. His delegation also endorsed the principle that a reservation to a treaty provision that reflected a peremptory norm was invalid. The possibility of formulating an objection to a reservation for reasons other than the invalidity of the reservation was also appropriate, since a reservation could be fully valid and yet give rise to an objection by a State for a reason linked to the application of the treaty. His delegation supported the provisions in the Guide establishing that the author of an objection to a reservation could expressly declare that the treaty in question would not enter into force between itself and the author of the reservation, which was a principle set out in the Vienna Conventions of 1969 and 1986. The scope and content of some reservations were such that it was legitimate for the author of the objection to make a radical declaration of that kind.

74. The Guide stated that silence in response to a reservation implied tacit acceptance of the reservation but that approval of an interpretative declaration could not be inferred from the mere silence of a State or an international organization. Perhaps the Guide should be consistent on the implications of silence in the two cases.

75. His delegation supported the Commission's recommendation that the General Assembly should take note of the Guide and ensure its widest possible dissemination.

76. With regard to the reservations dialogue mentioned by the Special Rapporteur in his seventeenth report (A/CN.4/647), the formulation of reservations to treaties should be regarded as a sovereign right of States that should not be restricted, except where States themselves accepted such restrictions. The same should apply to the withdrawal of reservations. While reservations of any kind affected the unity of a given treaty regime, they were also a powerful tool promoting universal accession to multilateral instruments in areas of general interest. States should avoid formulating reservations that were invalid or incompatible with the object and purpose of the treaty in question. The work carried out in that regard by the human rights treaty bodies and certain regional organizations was welcome, but those bodies should be regulated by States themselves pursuant to specific international treaties and within the framework of the powers given to the treaty bodies. An effective dialogue was already taking place between States on the subject of reservations, and it was not necessary to introduce new elements that might lead to undesirable consequences. Any recommendation adopted in that regard should not be an integral part of the Guide and should be confined to an appeal to States within the framework previously indicated.

77. Similarly, his delegation saw no need to establish special rules or recommendations with regard to the settlement of disputes that might arise as to the interpretation, validity or effects of a reservation or of an objection to a reservation. The existing general rules for the peaceful settlement of disputes were sufficient and were fully applicable in such cases.

78. The establishment of an observatory on reservations within the Sixth Committee, as proposed by the Commission, could be an acceptable mechanism operating on the basis of the needs of States facing problems with regard to reservations or objections or the acceptance thereof. The frame of reference for any such observatory should be the 1969 and 1986 Vienna Conventions and the Guide to Practice on Reservations to Treaties.

79. **Mr. Válek** (Czech Republic) said that the Guide to Practice on Reservations to Treaties was a work of enormous practical importance that would help States to assess properly the relevant aspects of the formulation of reservations, interpretative declarations and reactions to them and to evaluate the legal effects of those actions. His delegation welcomed the fact that the Special Rapporteur and the Commission had based their work on thorough research and had approached the subject with clear logic, academic rigour and common sense. The Guide comprehensively elucidated contentious aspects of reservations to treaties; most of the guidelines and the commentaries thereto should be welcomed.

80. Nonetheless, in a work of such magnitude, it was clear that certain minor points would need to be calibrated by subsequent practice. For example, his delegation would appreciate some clarification of the legal effects of late objections and objections to vague or general reservations and of the different ways in which objections forming part of a reservations dialogue, including requests for specification, reconsideration or withdrawal of a reservation, could be formulated. Those issues were of practical importance to his Government, since it mainly objected to those reservations that it considered prima facie inconsistent with the object and purpose of the treaty in question or that were vague or general in nature.

81. The conclusions on the reservations dialogue were extremely useful and his delegation welcomed their inclusion in the Guide. Such a dialogue could significantly contribute to the clarification of legal positions and assessment of the validity of reservations. He especially welcomed the suggestion that States should cooperate as closely as possible in order to exchange views on reservations in respect of which concerns had been raised and coordinate the measures to be taken; his Government was ready to participate actively in such cooperation, as it could help achieve a balanced response to a reservation.

82. His delegation welcomed the guidelines recommending that States should, to the extent possible, give reasons for formulating reservations and objections, and the commentaries to those guidelines, which were comprehensive and balanced. It was also pleased to note that appropriate consideration had been given to late objections since, despite their limited legal effects, they could help to determine the validity of the reservation and could also be an important element in the reservations dialogue. Lastly, States could undoubtedly benefit from a mechanism of assistance in relation to reservations to treaties, as recommended by the Commission.

83. **Ms. Orosan** (Romania) said that her delegation appreciated the Guide to Practice on Reservations to

Treaties, including the general commentary, the impressive number of examples taken from practice and the useful bibliography. Some of the guidelines were derived from the Vienna Conventions on the Law of Treaties, on Succession of States in respect of Treaties and on the Law of Treaties between States and International Organizations or between International Organizations, while others, such as those relating to interpretative declarations, tried to fill the gaps left by those Conventions. Some of the guidelines were *lex lata* while others represented *lex ferenda*. Her delegation agreed with most of the guidelines; even in those cases where it did not, it appreciated the arguments put forward in the commentary.

84. However, it shared the concerns of other delegations on the subject of late reservations. The approach taken in the Guide represented a significant departure from the regime of the 1969 Vienna Convention and should be treated with extreme caution. While her delegation appreciated the reasons given by the Special Rapporteur for the conclusions in the Guide, the practice of late formulation of reservations should not be legitimized or encouraged, as it might be detrimental to legal certainty. On the other hand, alternatives to the late formulation of reservations, such as denunciation of a treaty followed shortly by re-accession with reservations, should also be discouraged, as they might also have a negative effect on legal certainty. At the same time, her delegation welcomed the deletion of former guideline 3.3.3 on the effect of collective acceptance of an impermissible reservation, as it doubted that collective acceptance could simply “cure” the impermissibility of such a reservation.

85. Reiterating her delegation’s appreciation of the effort put into the study of reservations to treaties by the Special Rapporteur, she said that the future development of international treaty law could prove that the Special Rapporteur had been a visionary in his approach to some of the issues that currently appeared controversial.

The meeting rose at 1 p.m.