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Chairman: Mr. Tomka ..... (Slovakia)

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

Agenda item 147: Report of the International Law Commission on the work of its forty-ninth session (continued) (A/52/10)

1. Mr. Cede (Austria) said that his delegation felt that the work of the Special Rapporteur on reservations to treaties had not proceeded far enough to allow the drawing of even preliminary conclusions. His delegation would have preferred that the Preliminary Conclusions had dealt only with the question of the unity or diversity of the regime for reservations to treaties. It was difficult to draw conclusions on the subject when, among other questions, that of the object and purpose of the treaty, which was essential for the determination of the admissibility of a reservation, had not yet been studied.

2. Nevertheless, his delegation agreed with Conclusions 2 and 3 of the Special Rapporteur that the flexibility of the regime concerning reservations embodied in the Vienna Conventions on the law of treaties was suited to the requirements of all treaties, including normative treaties, and in particular, human rights treaties. His delegation wished to see that uniformity maintained and hoped that the work on reservations would result in guidelines for practice by States which did not in any way alter the Vienna regime.

3. Concerning Conclusion 5, Austria was of the opinion that, in order to carry out their functions properly, treaty-monitoring bodies must have the power to make an assessment of the admissibility of reservations. Even if that power was not explicitly expressed in the provisions of the treaty, it must be deduced from the mandate of the body in accordance with the doctrine of implied powers. A monitoring body could oversee the implementation of a treaty only if it knew the exact scope of the application undertaken by the party.

4. His delegation shared the Commission's view expressed in Conclusion 8 that a monitoring body which, like the Human Rights Committee, had the power only to express views or make recommendations on admissibility of a reservation, could not make binding decisions unless the relevant treaty gave it that power.

5. He drew attention to a possible contradiction between Conclusion 5 and Conclusion 7. If, as suggested in Conclusion 5, the monitoring bodies derived their implied power from the treaties which had established them, a view which Austria supported, it must be made clear in Conclusion 7 that the competence conferred on those bodies went beyond that derived from the treaties.

6. Concerning Conclusion 10, his delegation agreed with the Special Rapporteur that, when a reservation was found inadmissible, it was the responsibility of the reserving State to take action. It might be helpful to create a procedure for altering or withdrawing inadmissible reservations and formulating new ones even after ratification. It must also be borne in mind that States objecting to reservations did not wish to sever treaty relations with the reserving State, but rather to try to keep the reserving State a party to the treaty. In order to promote the universality of treaties, it would be useful to preserve the possibility of further dialogue between the reserving and the objecting State. For example, according to the practice it followed, Austria considered any objection as preliminary pending the outcome of the dialogue with the reserving State or that State's practice in the implementation of the treaty.

7. Finally, his delegation did not believe that Conclusion 12, which served to safeguard the practices of regional monitoring bodies, invited fragmentation of the regime governing reservations, or that it departed from the principle established in Conclusion 1.

8. Mr. Saland (Sweden), speaking on behalf of the Nordic countries, said he agreed with the Commission's view that the Vienna regime applied to all multilateral or normative treaties, including human rights treaties. Nevertheless, that regime had lacunae and was not without complications, precisely with regard to human rights treaties. The Commission should study that question further and present proposals.

9. The applicability of the Vienna regime should be the general rule, subject to exceptions through agreements in particular treaties, such as certain regional conventions.

10. While agreeing with Conclusions 5 and 6 that, where a treaty was silent on the subject, the monitoring bodies they established were competent, in order to carry out the functions assigned to them, to comment on and express recommendations with regard to the admissibility of reservations by States, and that competence of the monitoring bodies did not exclude the traditional modalities of control of contracting parties, the Nordic countries believed that the matter of extending the competence of certain monitoring bodies should be discussed further.

11. With regard to the highly complex question of objections to reservations, the Nordic countries agreed with the idea in Conclusion 10 that, in the event that a reservation was inadmissible, the reserving State must take action, while acknowledging that the States parties and monitoring bodies had a role to play in seeing that action was actually taken, and that it was important to analyse the effects of an inadmissible

reservation which the reserving State refused to withdraw or modify.

12. As for the Nordic countries, when they found a reservation inadmissible, it was their practice to object, stating that the objection did not preclude the entry into force in its entirety of the convention between the parties concerned. Obviously, it was unacceptable that a State could accede to a normative treaty and, at the same time, make reservations to nullify central provisions of that treaty. Reservations of that kind should not influence the legal effect of adherence to the treaty.

13. Finally, the Commission should study in depth the question of interpretative declarations, which sometimes constituted hidden reservations.

14. Mr. Verweij (Netherlands) said that, in contrast to the view expressed by the International Law Commission, it was on the whole debatable whether the Vienna regime had functioned adequately. The regime was unable to safeguard normative instruments, which was why the Commission should carry out a detailed study of the issue and make provision for reviewing and improving the current regime.

15. His delegation wondered whether the Special Rapporteur's preliminary conclusions were not premature. The first conclusion stated the obvious without fully defining the rule concerning the object and purpose of a treaty or the content and nature of the obligation which it created for States parties to a convention and for reserving States. In that regard, not only articles 19 and 20 but also article 18 of the Vienna Convention should be looked at again because the Convention offered no guidance on how to make such a determination. Moreover, the landmark ruling in the case on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide had dealt with a convention that had a very well defined object and purpose, which was not true of most treaties. The Special Rapporteur should therefore delve deeper in his research on those issues.

16. With regard to the second conclusion, research had shown that it was a misconception to think that the possibility of making reservations in itself would lead to a higher number of ratifications. It would be useful for the Rapporteur to check those assumptions by comparing quantitative information about ratifications and reservations.

17. Paragraph 3 of the preliminary conclusions, which stated that the reservations regime covered reservations to all normative multilateral treaties, including human rights treaties, was superfluous, since the issue was not whether the existing regime applied to all types of treaties, but whether it safeguarded the values embodied in normative instruments. It would be wrong to single out human rights instruments since the issue of reservations to normative treaties was much broader; similar problems arose with respect to conventions dealing with international humanitarian law, private international law or environmental law. The numerous declarations that had been made with respect to the Convention on the Law of the Sea were a case in point, since it might be hard to identify the specific effect of a declaration that appeared to exclude or modify the legal impact of the provisions of that Convention where it dealt with the common heritage of mankind, the environment, and so forth. There were a number of issues which were not adequately addressed by the existing law of treaties.

18. With regard to the Commission's future work, his delegation proposed broadening the debate on reservations in order to give adequate attention to the substantive dimension of reservations. Regarding the Special Rapporteur's intention to submit a report on dispute settlement linked to reservations in the year 2000, it would be more fruitful to look into the role that monitoring bodies could play in that area. Such bodies, which were not unique to human rights treaties, were qualified to look at reservations from the substantive point of view. They were able to give independent expert advice on the potential implications of reservations, without their debate necessarily leading to a dispute. The role of monitoring bodies should not be underestimated, although they should obviously operate within the limits of their authority.

19. Priority should be attached to work on a guide to practice, which should include sufficient information on the substantive dimensions of the law on reservations. There was a clear need for readily available reservations clauses that could be used in the drafting of legal instruments; work on dispute settlement could be deferred.

20. Mr. Dalton (United States of America) said that his delegation welcomed the Commission's reaffirmation of the basic principles of treaty law in its preliminary conclusions. The flexible rules on reservations that had evolved since the advisory opinion of the International Court of Justice regarding the Convention on the Punishment and Prevention of the Crime of Genocide had enabled many States to accede to treaties and had thereby played a key role in the rapid development of international law. There was therefore no need to amend the Vienna regime and the Commission's work should take the form of a guide to practice rather than a new convention.

21. His delegation also agreed with the Commission's view that the legal reservations regime was unitary and that there could be no exceptions in the case of human rights. Where

special regimes might be applicable, for example in the cases covered by article 20, paragraphs 2 and 3, of the 1969 Vienna Convention, a special mechanism was provided.

22. Although human rights treaty monitoring bodies were entitled to formulate comments or recommendations regarding reservations, they nevertheless did not have the power to set aside a reservation or make legal determinations regarding the validity of a reservation. That was the prerogative of States, which must in any event abide by the obligations stemming from the treaties to which they were signatories.

23. Regional instruments could provide for exceptions to the reservations regime, on condition that they did so expressly.

24. Ms. Gao Yanping (China) said that the reservations regime established by the 1969 Vienna Convention on the Law of Treaties represented a flexible balance between the two conflicting goals of universality and integrity of treaties. The regime should therefore be maintained and human rights treaties should not be excluded. If States agreed on the need to prohibit reservations, they could specify such a prohibition in their treaty, which was fully in line with the Vienna Convention on the Law of Treaties. Given that all provisions carried equal weight in contemporary international law, it was unnecessary to establish a particular reservations regime for a particular category of treaties.

25. The issue of human rights treaty monitoring bodies had not arisen when the Vienna Convention was being negotiated because such bodies did not exist at the time. Their purpose was not to examine the validity of reservations but rather to monitor the implementation of treaties; they had no functions other than those entrusted to them by the States parties. In accordance with international law and the relevant provisions of the Convention on the Law of Treaties, it was the responsibility of the State making a reservation to determine whether its reservation was consistent with the purpose and object of the treaty. Both international law and the reality of international relations required that States parties should be responsible for determining the consequences of reservations and the kind of treaty relationship that would obtain between them.

26. Lastly, her delegation joined with others in requesting the deletion of paragraph 12 of the preliminary conclusions, which implied that regional rules could differ from the Vienna regime.

27. Mr. Robinson (Jamaica) said it was surprising that after only three sessions, the Commission had reached conclusions, even preliminary ones, on the highly complex issue of reservations to normative multilateral treaties. However, although Conclusions 1 to 4 raised no problems, that was not true of the others. Generally speaking, he agreed with the Commission that the Vienna regime applied to all treaties, including human rights treaties.

28. Regarding the role of monitoring bodies in relation to reservations, it was important to bear in mind the paramountcy of the will of States parties to treaties and the consensual nature of treaties, which reflected customary international law and articles 19 and 20 of the 1969 Vienna Convention on the Law of Treaties. The Human Rights Committee was therefore wrong to arrogate to itself the right to pass on the validity of reservations expressed by States.

29. As for the distinction made in the conclusions between regional and global monitoring bodies, it would have been preferable to base that distinction not on their scope of action but on the powers vested in them by their constituent instruments, which might or might not give them a legally binding decision-making power over the parties concerned.

30. Regional and global treaty monitoring bodies which were competent only to make recommendations or non-binding findings should consult the reserving State and other States parties about any reservation, and should leave it to them to make a determination on the basis of articles 19 and 20 of the Vienna Convention. The reserving State should, on the basis of consultations, decide whether to maintain or modify the reservation or to withdraw from the treaty.

31. However, monitoring bodies might be entitled to express an opinion on a reservation if the States parties so agreed. If they commented on a reservation without the prior agreement of the parties and if the latter failed to object, their decision would be taken as valid and they would be considered to be competent in the matter in question. That would be akin to the practice of the International Labour Organization, whereby the depositary could rule on the validity of an interpretative declaration if the latter amounted to a reservation.

32. It would be useful to resolve the issue arising out of the fact that monitoring bodies could express opinions or make recommendations concerning the validity of a reservation but could not rule on its consequences. Being unable to draw conclusions from their evaluation of the validity of States' reservations, which was a matter for the States parties, treaty monitoring bodies were unable to evaluate the implementation of the provisions in respect of which States had made reservations, and therefore could not carry out their monitoring task. Also, it had to be recognized that States did not always play their part in that respect, which further complicated the task of the monitoring bodies.

33. The General Assembly should therefore adopt a resolution urging States to fulfil their obligation to object, in accordance with articles 19 and 20 of the Vienna Convention, to reservations which would have legal effects in the absence of objections by States parties, although the failure to object was not always inadvertent. It should encourage States parties to normative multilateral treaties, including human rights treaties with monitoring bodies, to adopt protocols conferring on those bodies competence to pass on the validity of reservations. States parties to similar treaties which had no monitoring bodies should adopt protocols setting out the modalities for settling disputes which could arise in respect of the implementation of the treaties, relating, inter alia, to reservations. Lastly, it should encourage States parties to new multilateral treaties, including human rights treaties, to include in them provisions specifically addressing the permissibility of reservations. The latter could either be allowed, provided that they were not inconsistent with the object and purpose of the treaty or, as in the case of the International Convention on the Elimination of All Forms of Racial Discrimination, be considered unacceptable if at least two thirds of the States parties objected to them.

34. Mr. Manongi (United Republic of Tanzania) said that, while recognizing the special characteristics of modern human rights treaties, which were law-making instruments rather than contractual instruments like traditional multilateral treaties, he did not believe that that justified defining a specific legal regime for them in respect of reservations. The Vienna regime, because of its adaptability and flexibility, was suited to all types of treaties and was more compatible with international practice and jurisprudence.

35. With regard to the role of monitoring bodies in regard to reservations, he believed that, whatever the shortcomings and ambiguities of the Vienna regime, such bodies should in no case be given the power to decide on the validity of any reservations. It was for States and States alone to decide on the admissibility of reservations; however, they could delegate that power to monitoring bodies if they saw fit and if they explicitly decided to do so. Under no circumstances must monitoring bodies take it upon themselves to exercise such functions. If a treaty was silent on that subject, it was for States themselves to define its provisions by adopting amendments for that purpose in accordance with the relevant procedure. Monitoring bodies could only bring the reservation made by the reserving State to the attention of the other States parties. If they failed to fulfil that communication role properly, the solution would be to improve their functioning, rather than to let them decide on the validity of reservations by States. Also, it was out of the question to give them the power to take decisions that would be binding on reserving States.

36. The Commission should give serious attention to questions of law which were not covered by the Vienna regime, and should try to strike an appropriate balance between respecting the freedom of States to make reservations and respect for the integrity of treaties. In any case, a refusal to create a special regime for human rights treaties or to give monitoring bodies responsibility for deciding on the validity of reservations was not tantamount to calling in question the normative nature of such treaties.

37. Mr. Monagas (Venezuela), referring to the topic of the nationality of natural persons in relation to the succession of States, said that since the draft articles adopted by the Commission stemmed from a desire to reconcile the interests of individuals with the rights and obligations of States involved in a State succession, they should facilitate not only the drafting of national legislation but also negotiations between States involved in a succession of States. He welcomed the fact that the draft articles were based on the provisions of the Vienna Conventions of 1978 and 1983 and departed from those Conventions whenever necessary. As to the form the draft articles should take, while it would be much easier for States to accept a declaration, it would be better, given the importance and nature of the topic, to opt for a convention which would, moreover, contribute to the progressive development and codification of international law. However, the substance was more important than the choice of form, and in any event, such rules must apply only to cases of legal succession and not to cases where an aggressor State imposed its nationality on the population of a territory it had illegally annexed.

38. With regard to the topic of the legal regime of reservations to treaties and normative treaties, including human rights treaties, the functions assigned to treaty-monitoring bodies should be purely advisory. Under no circumstances should such bodies take decisions that were binding on reserving States. Should it be necessary to expand their role in their constituent acts or in State practice, the States alone had the authority to decide to do so. It was crucial that, in future, conventions and normative instruments, including human rights instruments, should expressly define the advisory role to be played by monitoring bodies with respect to the permissibility of reservations made by States. In the case of the instruments already in force, it would also be appropriate to adopt additional protocols specifying the responsibilities of such bodies with respect to reservations. In the meantime, the Commission should keep the topic of reservations under study and conclude its work as soon as possible with a view to the adoption of a resolution thereon.

39. Consideration of the unilateral acts of States, a topic that was crucial to the elaboration of international law and to legal relations among States, should cover only truly unilateral acts of States that had legal effects at the international level, ruling out those unilateral acts that did not produce any legal effects and the unilateral acts of international organizations, which should be considered separately. The Commission should establish a definition of such acts after identifying their constituent elements and effects; it should set forth the general rules that applied to them and those that applied only to specific categories, taking due account of the law of treaties and the treaty and customary rules of international law, and recognizing the different issues they raised. A decision as to the form that the conclusions of the study should take could be made at a later stage, once the Commission had made progress in its work; the study itself could contribute to the progressive development and codification of international law by establishing rules that applied specifically to that type of act. Given the growing importance of the unilateral acts of States, the need for States to express their views on the topic and for the Secretariat to prepare a report on State practice in that area could not be overemphasized.

40. Mr. Holmes (Canada) expressed deep concern at the proliferation of reservations which were often incompatible with the object and purpose of the treaties concerned. He endorsed the Preliminary Conclusions adopted by the Commission and said that the Vienna regime was well suited to all multilateral treaties. Paragraphs 4 and 6 of the Conclusions struck a satisfactory balance between the competence conferred on the monitoring bodies and that conferred on the contracting parties and dispute-settlement bodies.

41. However, it would probably be useful for the Commission to elaborate on some of the ideas it had expressed in its Preliminary Conclusions. In particular, it could consider in greater detail the effects of reservations and objections. He failed to see the need for model clauses; in any event, it would be better to entrust the drafting of such clauses to a drafting committee.

42. Mr. Hilger (Germany) endorsed the idea put forward in the Commission's Preliminary Conclusions that the Vienna regime should remain basically unchanged, since it had been designed to be applied to all treaties. Besides, if an exception was made for human rights treaties, it was doubtful whether other categories of normative treaties would not then require a separate regime as well.

43. The Vienna regime, with its criterion of the object and purpose of treaties, offered maximum flexibility and adaptability, thus making it possible to address the two contradictory goals of securing the broadest possible participation in a treaty while safeguarding the treaty's essence. Thus, under the Vienna regime, the permissibility of reservations was evaluated in the light of the object and purpose of the treaty while the freedom of the other contracting parties to agree or object to reservations was fully preserved through a mechanism of acceptances and objections.

44. While it was true, where human rights treaties were concerned, that the Vienna regime had not envisaged the extensive role currently assigned to some monitoring bodies, such as the Human Rights Committee, his delegation believed that such bodies had the competence to examine the significance of reservations insofar as that was necessary for them to carry out the functions assigned to them under their respective treaties. He welcomed the recommendation in paragraph 7 of the Preliminary Conclusions that the States parties to human rights instruments should provide specific clauses or elaborate protocols to existing human rights treaties if they wished to confer competence on a monitoring body to determine the admissibility of a reservation.

45. As far as the effect of inadmissible reservations was concerned, he shared the Special Rapporteur's view that it was always the exclusive responsibility of the reserving State itself to rectify the defect in the expression of its consent to be bound. In such cases, the State could either withdraw the inadmissible reservation, modify it to bring it in line with the object and purpose of the treaty, or forgo becoming a party to the treaty altogether.

46. Nevertheless, the incompatibility of a reservation with the object and purpose of a multilateral treaty and the consequences resulting therefrom must be objective. However clearly that principle had been stated, its application in practice created difficulties. The absence of a body or system that would objectively decide on the compatibility of a reservation with the object and purpose of a treaty left the matter in the hands of the States parties. However, practice in that field differed considerably from State to State, ranging from the formulation of objections to complete indifference, even in the presence of far-reaching reservations. The International Law Commission therefore urgently needed to dispel the uncertainty surrounding the present regime with regard to the practical consequences of inadmissible reservations by preparing a guide to State practice in that area. However, such a guide should leave the Vienna regime intact, fill in its gaps and, in the course of time, become a locus classicus on questions left unanswered by the Vienna Conventions.

47. Mr. Momtaz (Islamic Republic of Iran) said that there was no reason to formulate a regime applicable specifically to human rights treaties. The criterion established by the International Court of Justice in its advisory opinion on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, namely compatibility of the reservation with the "object and purpose" of the treaty, was sufficient to preserve their integrity. In addition, peremptory norms and the provisions codifying the customary rules of general international law could not be subject to reservations. It was true that peremptory norms and customary rules were often difficult to identify, which could raise questions about the admissibility of reservations. In such a case, however, objections to a reservation by a large number of States parties to a treaty could allow a decision to be made on inadmissibility.

48. It would be unacceptable for monitoring bodies to rule on the admissibility of reservations, as States remained the real "masters of the treaty". It was therefore difficult to support the preliminary conclusion of the International Law Commission that, where human rights treaties were silent on the subject, the monitoring bodies could make comments and recommendations on the admissibility of reservations by States. However, it must be acknowledged that the freedom of appreciation that the Vienna regime left to States gave rise to certain practical difficulties, apparently due to the lack of clear and precise criteria, which was a weakness of the Vienna regime.

49. As for the final form which the Commission could give to its conclusions, his delegation agreed with the Special Rapporteur that they could take the form of a resolution, and endorsed the schedule and methods proposed for its adoption.

50. Mr. Al-Baharna (Bahrain), referring to the topic of nationality in relation to the succession of States, said that draft article 19, which stipulated that States should take into account the provisions of part II in giving effect to the provisions of part I in specific situations, belonged in part I of the draft articles instead. As for the final form which results of the Commission's work would take, he believed that in its current form, part II of the draft articles was not suitable for adoption as a treaty. His delegation had no substantive objections to the draft articles, however.

51. With regard to reservations to treaties, he believed that, while the Vienna regime required a thorough re-examination, there was no reason to formulate a separate regime for human rights treaties. As the Commission noted in paragraph 137 of its report, collaboration between States parties and monitoring bodies could provide the basis for a possible solution to the problem of reservations and the lacunae in the Vienna regime. Thus, the commitment expressed in paragraph 144 of the report seemed entirely reasonable. The monitoring bodies should confine themselves to calling reservations to the attention of the States concerned, but it was for States to act and to take any appropriate decision, either by reformulating their reservation or by withdrawing from the treaty. His delegation did not share the view expressed by some members of the Commission who did not support Conclusion 5 and were not convinced that Conclusion 12 constituted a sufficient "saving clause". It fully supported the text of the Preliminary Conclusions as adopted by the Commission.

52. Mr. Gray (Australia) noted that the Vienna Convention on the Law of Treaties did not provide a mechanism for assessing whether a reservation was incompatible with the object or purpose of a treaty, nor did it indicate what body was entitled to make such an assessment. His delegation agreed with the principles contained in the Commission's Preliminary Conclusions 1 to 3, namely that articles 19 to 23 of the Vienna Conventions governed the regime of reservations to treaties and that the object and purpose of the treaty was the most important criterion for determining the admissibility of a reservation. The Vienna regime applied to all multilateral treaties, including human rights treaties.

53. That said, certain elements must be defined in advance. First, the normative treaties to which those principles applied must be identified. Actually, a treaty could contain both normative and synallagmatic provisions. Second, there was a difference between a monitoring body and a depositary. The role of the depositary was generally administrative, but States could empower it to perform certain additional functions, particularly monitoring functions. The Preliminary Conclusions, however, appeared to envisage a different situation, where the monitoring bodies had functions in relation to reservations. The question remained whether those bodies should have the capacity to pronounce upon the validity of reservations, inasmuch as the Commission acknowledged in Conclusion 5 that those bodies had competence to comment and express recommendations on that subject; it was unclear, however, whether that referred to situations where the treaty was silent on the question of reservations as a whole or those where it was silent only on the role of monitoring bodies.

54. As for the timing of the monitoring body's expression of its views about a reservation, in accordance with article 19 of the Vienna Convention, reservations were generally made at the time when a State entered into a treaty, and other States could object within a limited time period. However, a monitoring body might express its views on a reservation well

after expiration of the period for objection. Its views could thus differ from those of States which did not raise objections.

55. His delegation could not agree with the view expressed in Preliminary Conclusion 6 that the competence of monitoring bodies did not affect the traditional modalities of control by the contracting parties or by the organs for settling any dispute that might arise concerning the interpretation or application of treaties. The question arose as to the ability of the monitoring body to press its view on a reserving State. Preliminary Conclusion 8 seemed to suggest an arbitral role for monitoring bodies. However, since their conclusions generally had the force of recommendations, they should not rule on the admissibility of reservations. Lastly, his delegation could not accept the idea expressed in Conclusions 8 and 10 that when a monitoring body pronounced itself on the admissibility of a reservation the reserving State was obliged to take action. The role of the monitoring bodies was above all to monitor compliance with treaties, and permitting them to arbitrate on the admissibility of reservations would extend their competence unacceptably.

56. Mr. Hoffman (South Africa) said that the rules relating to reservations to treaties contained in the Vienna Conventions on the Law of Treaties of 1969 and 1986 created a practical and reasonable system for inter-State relations in respect of multilateral treaties by giving States wide but not absolute discretion in making reservations to those treaties. The Vienna Conventions made it clear that States could not make reservations incompatible with the object and purpose of a treaty.

57. However, despite the clear rules and principles governing that subject, recent developments had led to a reconsideration of the Vienna regime. There was a need for greater clarity in the distinction between reservations and interpretative declarations, which more and more frequently accompanied or replaced reservations.

58. Moreover, the question of reservations to normative treaties, including human rights treaties, must be carefully considered. Although the Vienna regime was clearly applicable to normative multilateral treaties and should be respected, it was necessary to consider the reasons that had led the human rights monitoring bodies, such as the Human Rights Committee, to assert their competence in that field. It would be highly undesirable for the views of those monitoring bodies, which played a key role in the protection of human rights, to be simply dismissed by States without regard to the basic cause of the problem, namely, the failure of States parties to object to reservations that called into question the object and purpose of a particular treaty. Accordingly, the idea put forward in paragraph 147 of the Commission's report with regard to consulting the human rights monitoring bodies was an interesting one.

59. His delegation also supported the Commission's Preliminary Conclusions on the topic, which demonstrated both a commitment to legal principle and an awareness of the real problems facing human rights monitoring bodies. Those conclusions provided a sound basis for settling the dispute between some States and the treaty monitoring bodies.

60. Mr. Zahid (Morocco) was in favour of maintaining the Vienna regime intact with respect to reservations for a number of reasons. First, the practice of reservations to multilateral treaties had always existed, first as an international custom and then, beginning in 1969 (Vienna Convention on the Law of Treaties), in the form of codified legal rules, and it had thus become a sort of acquired sovereign right of States which could not be called into question or limited.

61. Second, the codification of that practice had been the result of a compromise between the need to codify international law by concluding multilateral treaties, on the one hand, and the sovereign right of States to make reservations, on the other. Therefore, any effort to upset that balance by eliminating the practice of reservations would surely undermine the freedom of States to undertake commitments at the international level and dissuade them from becoming parties to multilateral treaties; the result would be, if not to call into question, at least to dilute, the universal character of some of them.

62. Third, the regime introduced by the Vienna Conventions of 1969, 1978 and 1986 was functioning satisfactorily. Dozens of multilateral treaties had been adopted in various fields under that regime. Most of them had entered into force, thereby improving and consolidating the legal framework for international relations and cooperation.

63. Fourth, even if reservations might pose a problem, as certain human rights treaty monitoring bodies believed, the impact of those reservations could in no case be more negative than the conduct of certain States which, on the pretext that parts of certain treaties were not in their interest, tended to obstruct them by setting unacceptable conditions for signing them or by purposely delaying their entry into force or impeding their implementation or the establishment of treaty bodies. Nonetheless, recourse to reservations appeared to be the lesser evil compared to indifference towards any treaty deemed to be incompatible with the interests of a State that was prevented from making reservations.

64. Accordingly, there was no need to revise, and even less of a need to eliminate, the legal framework for reservations established by the three Vienna Conventions. Moreover, there were no grounds for proposing the establishment of a separate and restrictive regime for reservations specifically for multilateral human rights treaties. As international law was indivisible, there was no room for discrimination in favour of a particular category of treaties to the detriment of others. Therefore, any action that would violate those principles would only dissuade States from becoming parties to multilateral treaties and, in the long run, undermine efforts to codify international law.

65. Mr. Lavalle (Guatemala) said he agreed with those delegations which believed that the International Law Commission had acted prematurely in adopting a set of Preliminary Conclusions on reservations to treaties. For example, with regard to the ambiguities and lacunae of the Vienna regime, the Special Rapporteur could have recommended in those Conclusions that multilateral treaties should either expressly prohibit reservations or make it quite clear in some other way that they were permitted only with respect to certain provisions of a treaty.

66. Moreover, if the Commission supported the idea apparently put forward in paragraph 5 of the Preliminary Conclusions, namely, that the competence to decide on the admissibility of reservations to a particular treaty was essential in order for the competent monitoring body to carry out its functions, it should express itself more clearly by aligning the wording of the paragraph with the text proposed by the Special Rapporteur.

67. His delegation could not support the idea put forward in paragraph 10 of the Preliminary Conclusions whereby, in the event of inadmissibility of a reservation, the reserving State was empowered to modify or withdraw its reservation or forgo becoming a party to the treaty. Apart from the case of a multilateral treaty to which States became parties simply by signing it, a reserving State could, in the non-legal sense of the term "forgo" becoming a party to a multilateral treaty if it made a reservation at the time of signing or did not ratify it. However, if the State in question made its reservation when ratifying the treaty or confirmed its reservation during the ratification phase, it was impossible, at least in the case of a normative treaty, for it to react to objections to its reservation by forgoing becoming a party to the treaty unless, of course, the treaty included a provision for its denunciation. The possibility of forgoing becoming a party to a treaty contemplated in paragraph 10 of the Preliminary Conclusions could come into play only where a treaty empowered any reserving State to forgo becoming a party should the treaty's monitoring body declare its reservation inadmissible. There were, however, no such treaties.

68. With regard to paragraph 4 of the Preliminary Conclusions, it seemed somewhat of an exaggeration to speak of "many human rights treaties". In any case, it would be preferable to list such treaties.

69. With regard to paragraph 9, his delegation wondered whether the Commission, a subsidiary body of the United Nations on which experts served in their personal capacity, was authorized to issue an appeal to States of the kind contained in that paragraph.

70. Paragraph 8 was confusing because, undoubtedly, if a treaty gave it sufficient powers to that end, the monitoring body established by that same treaty could, notwithstanding the provisions of paragraph 6 of the Preliminary Conclusions, exercise, with regard to reservations, powers going beyond those given to it for the performance of its monitoring function per se, for example that of making non-binding recommendations to States. However, his delegation was not in favour of inserting clauses in future normative multilateral treaties that would give such powers to bodies established thereunder. The fact remained, however, that no jus cogens provision prohibited States wishing to do so from giving such bodies the power to assess the validity of reservations—which was normally their prerogative—in accordance with the Vienna Convention on the Law of Treaties.

71. Lastly, his delegation wondered why paragraph 12 of the Preliminary Conclusions contained a safeguard clause for regional regimes. That paragraph could be improved by replacing the words "within regional contexts" by the phrase "jointly with States parties".

The meeting rose at 6.05 p.m.