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**A/CN.4/SR.2711**

**Summary record of the 2711th meeting**

Topic:  
**<multiple topics>**

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# INTERNATIONAL LAW COMMISSION

## SUMMARY RECORDS OF THE FIRST PART OF THE FIFTY-FOURTH SESSION

*Held at Geneva from 29 April to 7 June 2002*

### 2711th MEETING

*Monday, 29 April 2002, at 3.10 p.m.*

*Acting Chair:* Mr. Enrique CANDIOTI

*Chair:* Mr. Robert ROSENSTOCK

*Present:* Mr. Addo, Mr. Al-Marri, Mr. Baena Soares, Mr. Brownlie, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr. Kemicha, Mr. Kuznetsov, Mr. Mansfield, Mr. Momtaz, Mr. Niehaus, Mr. Opertti Badan, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Rodríguez Cedeño, Mr. Simma, Mr. Tomka, Ms. Xue, Mr. Yamada.

#### Opening of the session

1. The ACTING CHAIR declared open the fifty-fourth session of the International Law Commission, which was also the first of the new quinquennium, and welcomed all members of the Commission, particularly the new members.

#### Election of officers

*Mr. Rosenstock was elected Chair by acclamation.*

*Mr. Rosenstock took the Chair.*

2. The CHAIR thanked the members of the Commission for their trust and said that he would make every effort

to deserve it. At the start of the new quinquennium, the Commission's strength lay in what its members brought to it: their intellectual rigour and capacity, their respect for each other's views and their discipline. The Commission was also fortunate in being able to depend on an extremely competent and knowledgeable Secretariat; it thus had all the necessary components for doing effective and productive work. He requested the Planning Group to consider how best to organize the work of the session so that the Commission could make the best use of its time.

3. He then invited the members of the Commission to observe a minute of silence in memory of Adegoke Ajibola Ige of Nigeria, who had been elected a member of the Commission by the United Nations General Assembly at the fifty-fourth session of the Commission and who had passed away a few months after his election.

*The Commission observed a minute of silence.*

*Mr. Candiotti was elected first Vice-Chair by acclamation.*

*Mr. Kateka was elected second Vice-Chair by acclamation.*

*Mr. Yamada was elected Chair of the Drafting Committee by acclamation.*

*Mr. Kuznetsov was elected Rapporteur by acclamation.*

#### Adoption of the agenda (A/CN.4/520)

4. The CHAIR said that the Secretariat had drawn his attention to a note (document without a symbol distributed in the meeting room) addressed to the Secretary of the Commission by various permanent missions on the topic of international liability for injurious consequences arising out of acts not prohibited by international law. That question would be taken up in the context of new topics, the Commission having agreed to consider early in the session the selection of two new or additional topics. The Commission would come back to those issues after consultations with the Bureau.

5. Mr. BAENA SOARES said that there was every justification for including an item entitled “International liability for injurious consequences arising out of acts not prohibited by international law” in the provisional agenda for the fifty-fourth session, since the General Assembly had requested it in its resolution 56/82 of 12 December 2001, and since, in conformity with article 18, paragraph 3, of its statute, the Commission must give priority to requests by the Assembly to deal with any question. Moreover, the question was not an entirely new one: it had already been considered from the viewpoint of prevention of transboundary harm from hazardous activities. The Commission would not be bowing to the instructions of a number of Governments, but applying a decision taken by the Assembly.

6. The CHAIR said that the General Assembly did not determine the Commission’s agenda. It made recommendations which the Commission considered.

7. Mr. OPERTTI BADAN said he shared Mr. Baena Soares’s view that the topic was extremely important and that the Commission should include it without further delay in its agenda.

8. The CHAIR said he had no doubt that the topic was important, but that in his opinion its inclusion in the agenda should be discussed first in an informal working group.

9. Ms. ESCARAMEIA said that, as she understood it, only the first part of the topic—that relating to prevention—had been taken up, and the aspects relating to liability remained to be considered, so the Commission was not before a new topic but before the continuation of an existing one. The Sixth Committee of the General Assembly had strongly urged the Commission to take up the second part of the topic at the current session. Like previous speakers, she thought that it should be included as an item in the provisional agenda. If that was not possible, the provisional agenda could be adopted as it stood on the understanding that informal consultations would subsequently be held on the subject.

10. Mr. BROWNLIE said that the question was whether the Commission could accept a proposal made by a group of States in a peremptory manner. While the views of States had to be taken into account, the members of the Commission, who were not representatives of States, should be able to express their own views in due course and in good order.

11. Mr. TOMKA proposed that the provisional agenda contained in document A/CN.4/520 should be adopted on the understanding that the Commission would come back to the issue of new topics to be included in its agenda and would report on that issue to the General Assembly in its report on the work of its current session.

12. Mr. MANSFIELD said that he did not see a peremptory request in the note under consideration, but, rather, an expression of surprise on the part of a group of States that a topic on which the Commission had not concluded

ed its consideration was not contained in its provisional agenda. As he shared that surprise, he would like some explanation to be given to him in the context of informal consultations before the provisional agenda was officially adopted.

13. Mr. RODRÍGUEZ CEDEÑO said that the agenda could be adopted on a provisional basis with the understanding that informal consultations would be held as quickly as possible, for example, in the framework of a working group. Perhaps the consideration of the topic could be postponed until the second part of the current session. He was in favour of the inclusion of the topic in the agenda.

14. Mr. COMISSÁRIO AFONSO said that he agreed with those members who favoured the inclusion of the topic in question in the agenda.

15. Mr. OPERTTI BADAN suggested that the Commission should provisionally adopt the agenda and immediately proceed in a way that would enable it to come back to the topic. The provisional adoption of the agenda must not be regarded as prejudging whether or not the topic under consideration would be included. The position of the group of States in favour of inclusion could not be considered futile and must be given the members’ full attention.

16. Mr. PAMBOU-TCHIVOUNDA said that the topic could not be included in the agenda without first being considered, in keeping with the Commission’s practice. That could be done only under agenda item 10, “Programme, procedures and working methods of the Commission and its documentation”. It was up to the Planning Group or even a working group to take a decision to that effect. Not until the report on the work of the current session could the Commission inform the General Assembly that it had accepted the request of a group of States and might include the topic in the agenda of one of its later sessions. The provisional agenda could very well be adopted without any impact on the outcome of the initiative of the group of States, it being understood that the Commission reserved the right to consider the initiative under agenda item 6.

17. Mr. PELLET said that he was shocked by the interference of certain States in the Commission’s work and regarded their initiative as an unacceptable precedent. He was also shocked by the precipitous way in which certain members wanted to include the topic in the agenda, although everyone knew how sensitive the problem was. Like Mr. Opertti Badan, Mr. Pambou-Tchivounda and Mr. Rodríguez Cedeño, he thought that, once the agenda had been adopted, an open-ended working group should be set up to reflect calmly on what to do about the topic, which, in any case, was still on the Commission’s programme of work. The provisional agenda should therefore be adopted on the understanding that a working group would be established on the problem of injurious consequences arising out of acts not prohibited by international law and that the Commission would adopt new topics without delay.

18. Mr. GALICKI said he agreed with that proposal and pointed out that, although in paragraph 3 of General Assembly resolution 56/82 the Sixth Committee had requested the Commission to proceed with its work on the liability aspects of the topic of international liability for injurious consequences arising out of acts not prohibited by international law, in paragraph 8 it had also requested the Commission to begin its work on the topic of the responsibility of international organizations. But the note of the group of States was a strange document: members were not required to take instructions from Governments. He thought that the provisional agenda should be adopted as it stood.

19. Ms. XUE said she endorsed Mr. Tomka's suggestion that the issue should be set aside for the moment and that informal consultations should be held to meet the concerns of all members. The concerns of Governments, which members came from, were equally important and must be taken into account.

20. Mr. CANDIOTI said that the item in question had been on the Commission's agenda for more than 20 years. For him, the question was not why it should be included, but why it should be excluded.

21. The CHAIR said that at issue was not whether to continue with the part of the topic on "liability", but whether that was how items should be included in the provisional agenda.

22. Mr. CHEE stressed that the Commission's statute made it an independent and autonomous body. The request of the group of States jeopardized that autonomy. The Commission must, however, not lose sight of the importance of the topic of liability, and he therefore supported the proposals by Mr. Pellet and Mr. Tomka.

23. The CHAIR said that the point was not whether or not the Commission should deal with the topic, but whether, under the circumstances, the topic should be on the provisional agenda. He endorsed the suggestions by Mr. Operti Badan, Mr. Pambou-Tchivounda and Mr. Tomka that the provisional agenda should be adopted as it stood, bearing in mind that the Commission would take up the question of new agenda items, obviously including the item on international liability for injurious consequences arising out of acts not prohibited by international law and the item on the responsibility of international organizations, as a matter of priority. However, the Commission should not adopt a new method of including items in the agenda because, in the long run, that might cause problems. Clearly, the Commission would accept the General Assembly's request. The only question was whether it would depart from the way in which it had adopted the agenda for many years—in keeping with a certain process and not on the spur of the moment. If he heard no objection, he would take it that the Commission wished to adopt the proposal by Mr. Operti Badan and Mr. Tomka.

*It was so decided.*

*The agenda was adopted.*

### **Filling of casual vacancies in the Commission (article 11 of the statute) (A/CN.4/522 and Add.1)**

[Agenda item 1]

24. The CHAIR said that, in accordance with article 11 of the Commission's statute, the Commission itself would fill the vacancy; the curricula vitae of the two candidates had been circulated to the members. As was customary, the election would take place in closed session.

*The meeting was suspended at 5.35 p.m.  
and resumed at 5.45 p.m.*

25. The CHAIR announced that the Commission had elected Mr. Kabatsi to fill the vacancy resulting from the death of Adegoke Ajibola Ige.

### **Organization of work of the session**

[Agenda item 2]

26. The CHAIR drew the members' attention to the programme of work. Mr. Yamada, the Chair of the Drafting Committee, would submit the list of that body's members the next day. He asked the Chair of the Planning Group to prepare the list of that group's members.

27. Mr. YAMADA (Chair of the Drafting Committee) said that it had been the Commission's practice for the Drafting Committee to have about 14 members and that, in order to ensure optimal participation, its composition should vary depending on the topic under consideration. He requested members who wished to take part in the Committee on a particular topic to make themselves known and said that the Committee's composition should be based on the equitable representation of regions and legal systems.

*The meeting rose at 5.50 p.m.*

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## **2712th MEETING**

*Tuesday, 30 April 2002, at 10 a.m.*

*Chair:* Mr. Robert ROSENSTOCK

*Present:* Mr. Addo, Mr. Al-Marri, Mr. Baena Soares, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr.