

Document:-  
**A/CN.4/SR.2748**

**Summary record of the 2748th meeting**

Topic:

Extract from the Yearbook of the International Law Commission:-  
**2002, vol. I**

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Commission decided not to refer article 16 to the Drafting Committee.”

55. The CHAIR said that the word “However” might give rise to problems. Perhaps it could be left out. As to substance, he believed that there had been an “indicative vote” on the question whether or not article 16 should be referred to the Drafting Committee and that opinions had been divided.

56. Mr. DUGARD (Special Rapporteur) said that he would prefer that reference not be made to that vote because the results had not been very clear-cut.

57. Mr. PELLET said that the reasons why the Commission had decided not to refer article 16 to the Drafting Committee were explained in paragraphs 12 to 15. On the basis of Mr. Al-Baharna’s suggestion, perhaps paragraph 22 could be deleted and paragraph 21 could end with the following wording: “However, for the reasons explained in paragraphs 12 to 15 above, the Commission decided not to refer article 16 to the Drafting Committee”.

58. Mr. SIMMA said that the reasons given in paragraphs 12 to 15 were basically negative, but the members of the Commission had been divided “almost evenly”, as was indicated at the beginning of paragraph 21. It would therefore be better to adopt Mr. Al-Baharna’s original proposal.

59. The CHAIR said that, if he heard no objection, he would take it that the Commission agreed that paragraph 22 should be deleted and that its content, except for the words “subsequently”, should be added at the end of paragraph 21.

*It was so decided.*

*Paragraph 21, as amended, was adopted.*

Paragraphs 23 to 26

*Paragraphs 23 to 26 were adopted.*

Paragraph 27

60. Mr. BROWNLIE proposed that the words “relating to the treatment of foreign nationals” should be added after the words “State responsibility” at the end of the second sentence.

61. Mr. TOMKA said that the rules of State responsibility relating to the treatment of aliens were primary rules, not secondary rules. He therefore wondered whether it would not be better to add the wording proposed by Mr. Brownlie in the first sentence, the end of which would then read: “Denial of justice was not limited to judicial action or inaction, but included violations by the executive and the legislature of international law relating to the treatment of foreign nationals, thereby covering the whole field of State responsibility.”

62. The CHAIR questioned whether it could be said that international law relating to the treatment of foreign nationals “covered” the whole field of State responsibility.

63. Mr. BROWNLIE said that, although that wording did not change the meaning of the paragraph, it did place too much emphasis on the executive and the legislature, whereas the concept of “denial of justice” was now very commonly used in arbitral procedure, where it constituted the basis of many legal cases brought in order to obtain compensation for injury to foreign nationals.

64. Mr. GAJA said that the words “State responsibility” might be replaced by the words “the conduct of States”.

65. Mr. SIMMA said that the juxtaposition of the words “international law relating to the treatment of foreign nationals” and “thereby covering the whole field of State responsibility” did give rise to a problem. The latter phrase should be amended.

66. Following a discussion in which Mr. DUGARD (Special Rapporteur), Mr. BROWNLIE, Mr. SIMMA and Mr. TOMKA took part, the CHAIR suggested that the words “thereby covering the whole field of State responsibility” should be deleted, thereby solving the problem of the definition of the scope of State responsibility.

*It was so decided.*

*Paragraph 27, as amended, was adopted.*

Paragraph 28

*Paragraph 28 was adopted.*

*Chapter V, section B, as amended, was adopted.*

*Chapter V, as amended, was adopted.*

*The meeting rose at 6 p.m.*

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## 2748th MEETING

*Wednesday, 14 August 2002, at 10.05 a.m.*

*Chair: Mr. Robert ROSENSTOCK*

*Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Marri, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kamto,*

Mr. Kateka, Mr. Kemicha, Mr. Koskenniemi, Mr. Mansfield, Mr. Momtaz, Mr. Opertti Badan, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Rodríguez Cedeño, Mr. Sepúlveda, Mr. Simma, Mr. Tomka, Mr. Yamada.

**Unilateral acts of States (*concluded*)\* (A/CN.4/524, A/CN.4/525 and Add.1 and 2,<sup>1</sup> A/CN.4/521, sect. D)**

[Agenda item 5]

1. Mr. RODRÍGUEZ CEDEÑO (Chair of the open-ended Working Group on Unilateral Acts of States, Special Rapporteur) informed the Commission that informal consultations on unilateral acts of States had taken place the previous week, following similar consultations during the first part of the session. There had been two main topics of discussion, the first being the need for a compilation of State practice in the field of the unilateral acts of States, in order to put the Commission's work on a firmer basis and, indeed, to arrive at a proper definition of the topic. Mr. Simma had put forward the interesting proposal that the compilation could be carried out with the assistance of a private German company. Coordination would be the responsibility of both Mr. Simma and himself. The methodology and terms of reference of the compilation, which would be drafted shortly, would be put before the Commission, and progress on the project would be assessed by Mr. Simma and himself.

2. The scope of future work had also been discussed. It had been agreed that the focus should be on the topic of recognition, a fundamental institution of international law, with reference to the research that had been done and how it could advance the Commission's own work. Finally, the Working Group hoped to discuss the draft articles on unilateral acts of States submitted to the Commission by the Special Rapporteur in his fourth report at the previous session,<sup>2</sup> with a view to improving the text, taking account both of members' comments and of the results of the compilation of State practice. He hoped to be able to maintain contact with his colleagues during the intersessional period in order to keep them abreast of any developments.

**Draft report of the Commission on the work of its fifty-fourth session (*continued*)**

**CHAPTER IV. *Reservations to treaties* (A/CN.4/L.618 and Add.1–4)**

3. The CHAIR invited the members of the Commission to consider chapter IV of the draft report of the Commission.

\* Resumed from the 2727th meeting.

<sup>1</sup> Reproduced in *Yearbook ... 2002*, vol. II (Part One).

<sup>2</sup> See 2723rd meeting, footnote 2.

**C. Draft guidelines on reservations to treaties provisionally adopted so far by the Commission (A/CN.4/L.618/Add.2 and 3)**

2. TEXT OF THE DRAFT GUIDELINES ON RESERVATIONS TO TREATIES WITH COMMENTARIES THERETO PROVISIONALLY ADOPTED BY THE COMMISSION AT ITS FIFTY-FOURTH SESSION (A/CN.4/L.618/Add.3)

*Commentary to guideline 2.1.1* (Written form)

Paragraphs (1) to (5)

*Paragraphs (1) to (5) were adopted.*

Paragraph (6)

4. The CHAIR questioned whether it was technically correct to refer to the "second reading" of the draft guideline, since the first reading had not yet been completed.

5. Mr. PELLET (Special Rapporteur) pointed out that, as was indicated in the footnote, the paragraph related to the fourth report on the law of treaties in 1965 by Sir Humphrey Waldock, the Special Rapporteur at the time.

6. The CHAIR, supported by Mr. TOMKA, proposed that the words "Special Rapporteur" should be replaced by the words "Sir Humphrey Waldock", in order to avoid confusion.

*Paragraph (6), as amended, was adopted.*

Paragraphs (7) to (11)

*Paragraphs (7) to (11) were adopted.*

*The commentary to guideline 2.1.1, as amended, was adopted.*

*Commentary to guideline 2.1.2* (Form of formal confirmation)

7. Mr. SIMMA said that, in the English text, the draft guidelines should appear in a typeface that made them stand out from the rest of the text, as was the case in other parts of the report.

Paragraphs (1) to (4)

*Paragraphs (1) to (4) were adopted.*

*The commentary to guideline 2.1.2 was adopted.*

*Commentary to guideline 2.1.3* (Formulation of a reservation at the international level)

Paragraphs (1) to (10)

*Paragraphs (1) to (10) were adopted.*

Paragraph (11)

*Paragraph (11) was adopted with a minor editing change in the first footnote.*

Paragraph (12)

*Paragraph (12) was adopted with a minor drafting change.*

Paragraph (13)

8. Mr. TOMKA said that, as it stood, the last sentence of the paragraph could give the impression that the practice in question was accepted in all international organizations other than the United Nations. The word “certain” should be inserted before “international organizations”.

*Paragraph (13), as amended, was adopted.*

Paragraph (14)

9. Mr. TOMKA said that, whereas paragraphs (11) and (12) dealt with the formulation of reservations, paragraph (14) related to their transmission. There was an important difference between the two procedures. Moreover, the practice of the 1928 Havana Convention on Treaties, referred to in the second sentence, did not differ from that of the United Nations. He would be in favour of deleting the paragraph.

10. Mr. PELLET (Special Rapporteur) said that, according to his understanding, a permanent representative to the United Nations could not transmit an act of ratification unless it had been signed by another authority. If Mr. Tomka was correct, however, the comparison with the Convention could be problematic; he would check the situation. On the first point, Mr. Tomka was mistaken: paragraphs (11) and (12) dealt with exactly the same procedure, so far as the practice of the Secretary-General was concerned. He would therefore prefer to retain paragraph 14. If United Nations practice was not compared with that of other organizations, then the guideline itself would be called into question.

11. The CHAIR said that, since the arguments of both Mr. Tomka and the Special Rapporteur were based on the Convention, which had not yet entered into force, deletion of the paragraph might be acceptable.

12. Mr. PELLET (Special Rapporteur) suggested that the paragraph should be truncated to read: “Thus, it seems, for example, that the Secretary-General of OAS and the Secretary-General of the Council of Europe accept reservations ‘recorded’ in letters from permanent representatives.”

13. Mr. TOMKA confessed himself still exercised over the word “transmitted”. Whereas the Council of Europe practice was perfectly clear, that of the 1928 Havana Convention on Treaties was not. He wondered, for example, whether a permanent representative could make a reservation and, if so, whether he could do so in a document signed by himself. Perhaps the Latin American members of the Commission could confirm that the procedures of the Convention were followed. Any mistake by the Commission would be pointed out by the Sixth Committee.

14. Mr. PELLET (Special Rapporteur) said that he could guarantee that the practice was as he had described: a member of the Secretariat had been given oral information to that effect by the OAS Secretariat. Confirmation could also be found in his sixth report on reservations to treaties.<sup>3</sup>

15. Mr. OPERTTI BADAN said that the normal practice in Latin America was for a reservation to be transmitted by the minister for foreign affairs or, on the minister’s instructions, by his or her representative.

*Paragraph (14), as amended by the Special Rapporteur, was adopted.*

Paragraphs (15) and (16)

*Paragraphs (15) and (16) were adopted.*

Paragraph (17)

16. Mr. TOMKA said that, in the interests of consistency with paragraph (13), the word “certain” should be inserted before “international organizations” in the first sentence.

*Paragraph (17), as amended, was adopted.*

Paragraph (18)

17. Mr. GAJA noted that two article numbers of the 1969 and 1986 Vienna Conventions had been left blank in the English version. The blanks should be filled with the numbers 10 and 12 respectively.

*Paragraph (18), as amended, was adopted.*

*The commentary to guideline 2.1.3, as amended, was adopted.*

*Commentary to guideline 2.1.4 [2.1.3 bis, 2.1.4] (Absence of consequences at the international level of the violation of internal rules regarding the formulation of reservations)*

Paragraphs (1) and (2)

*Paragraphs (1) and (2) were adopted.*

Paragraph (3)

*Paragraph (3) was adopted with a minor drafting change.*

Paragraphs (4) to (10)

*Paragraphs (4) to (10) were adopted.*

<sup>3</sup> See 2719th meeting, footnote 10.

Paragraph (11)

18. Mr. KAMTO said it was too categorical to declare that a State should never be allowed to claim that a violation of the provisions of internal law had invalidated a reservation it had formulated, since the analysis had shown that, although the rules governing the formulation of reservations did not appear in national constitutions, they might be established in other provisions of internal law. Accordingly, he proposed that the word “never” should be replaced by “not”.

*Paragraph (11), as amended, was adopted.*

Paragraphs (12) and (13)

*Paragraphs (12) and (13) were adopted.*

*The commentary to guideline 2.1.4, as amended, was adopted.*

*Commentary to guideline 2.1.5 (Communication of reservations)*

Paragraphs (1) to (4)

*Paragraphs (1) to (4) were adopted.*

Paragraph (5)

19. Mr. MOMTAZ questioned the use of the word “puzzling” in the footnote and also why the quotation to which the footnote referred appeared in English in the French version of the draft report, even though the quotation was taken from the *Yearbook ... 1951*.

20. Mr. PELLET (Special Rapporteur) said that the *Yearbooks* from 1949 to 1951 had not been published in French. The word “puzzling” had been used because the wording of the provision cited was unusual, since it was descriptive rather than normative. However, he agreed that the second sentence of the footnote could be eliminated.

*Paragraph (5), as amended, was adopted.*

Paragraph (6)

*Paragraph (6) was adopted.*

Paragraph (7)

*Paragraph (7) was adopted with a minor editing change.*

Paragraphs (8) to (12)

*Paragraphs (8) to (12) were adopted.*

Paragraph (13)

*Paragraph (13) was adopted with minor editing changes.*

Paragraphs (14) to (26)

*Paragraphs (14) to (26) were adopted.*

Paragraph (27)

21. Following a discussion on the European Community and whether it had a Secretary-General, in which Mr. TOMKA, Mr. SIMMA and Mr. DAOUDI took part, Mr. PELLET (Special Rapporteur) proposed that the second sentence of the paragraph should be amended to read “In the case of the European Community, for example, the collegial nature of the Commission might raise some problems.”

*Paragraph (27), as amended, was adopted.*

Paragraph (28)

*Paragraph (28) was adopted with a minor editing change.*

Paragraph (29)

*Paragraph (29) was adopted.*

Paragraph (30)

22. Mr. SIMMA questioned whether the word “trickiest” was an appropriate translation of *la plus délicate*.

23. Mr. BROWNLIE said that “trickiest” was slightly demotic, but it was a perfectly straightforward word. It was not slang and it was not offensive; therefore, he saw no need to change it, even though it was a little unusual in the bureaucratic context.

24. Mr. PELLET (Special Rapporteur) said that each time a French-speaking member of the Commission questioned wording in the French text the matter was referred to the Secretariat. Consequently, that was the most appropriate way to proceed in the present case.

25. Mr. SIMMA, seconded by Mr. KATEKA (Alternate Rapporteur), said that, if a member of the Commission wanted a word changed, it was not as simple as asking the Secretariat to add a comma or a full stop. It was a question of substance and not merely of form, and members of the Commission should have an opportunity to express their views.

26. Mr. PELLET (Special Rapporteur) said that he had taken note of the matter and would remind Mr. Brownlie, Mr. Kateka, Mr. Simma and the Chair when the French-speaking members of the Commission had problems with the French language. There should not be a double standard.

27. Mr. TOMKA proposed that in the paragraph’s second footnote the word *américaine* should be replaced by the words *des États-Unis*.

*Paragraph 30, as amended, was adopted.*

Paragraphs (31) to (33)

*Paragraphs (31) to (33) were adopted.*

*The commentary to guideline 2.1.5, as amended, was adopted.*

*Commentary to guideline 2.1.6 [2.1.6, 2.1.8] (Procedure for communication of reservations)*

28. Mr. SIMMA pointed out that there was an error in paragraph 3 of the English version of the draft guideline. The words “an objection to” should be inserted after “The time period for formulating”.

Paragraphs (1) to (20)

*Paragraphs (1) to (20) were adopted.*

Paragraph (21)

29. Ms. ESCARAMEIA proposed that the phrase “Although some members had a different opinion,” should be inserted in the antepenultimate sentence, before the words “the Commission nevertheless took the view that”.

*Paragraph (21), as amended, was adopted.*

Paragraph (22)

*Paragraph (22) was adopted.*

Paragraph (23)

30. Mr. GAJA said that the paragraph gave the impression that the date on which a reservation was made was the date on which it was communicated to the other contracting parties; whereas, when there was a depositary, it was the date on which it was communicated to the latter.

*The meeting was suspended at 10.55 a.m.  
and resumed at 11 a.m.*

31. Mr. PELLET (Special Rapporteur) said that the problem raised by Mr. Gaja had initially seemed fairly complex, but that, after informal consultations, it seemed less so. In drafting paragraph (23), he now realized, he had probably had in mind draft guideline 2.1.6 as a whole, not just paragraph 2. Mr. Daoudi had brought up another point during the consultations. To take account of both, he proposed the following revision to paragraph (23): to end the second sentence with the words “by the depositary”; to delete the first part of the third sentence, up to and including the words “received the communication”; and to insert the following in place of the deleted text: “The expression ‘as the case may be’ covers a situation in which there is a depositary. In such a case, the communication of the reservation to the depositary may produce effects directly, if only in respect of the depositary himself, who is required to transmit it ‘as soon as possible’, a period of time that can be assessed only in terms of the date on which he himself has received the communication.” The

rest of the third sentence, “moreover ... as from that date” (*de plus ... de cette date*), would remain unchanged, and the last sentence would be deleted.

32. Mr. DAOUDI said that, as originally worded, paragraph (23) gave the impression that, according to article 79 of the 1986 Vienna Convention and draft guideline 2.1.6, a reservation was made once it was received by the depositary—in other words, the time period applying to the reservation began then. In reality, however, according to both article 79 of the Convention and draft guideline 2.1.6, the time period could begin only when the reservation was received by the other State to which it was addressed. Many treaty provisions, it was true, set the time period as starting from the receipt of the communication by the depositary, but they described special situations. The general situation was that the time period for entering an objection could begin only once the communication was received by the State concerned. The second sentence of paragraph (23) addressed a situation in which, for example, the depositary sat on a communication for a given period of time. In such a case, the depositary’s responsibility certainly came into play, but the fact remained that the reservation had not been received by the State to which the reservation was addressed, and the time period for lodging an objection to the reservation could not begin.

33. The text had been greatly improved by the change proposed by the Special Rapporteur, but the last part, “a period of time that can be assessed only in terms of the date on which he himself has received the communication”, left the problem unresolved and could create misunderstandings. It should, therefore, be deleted.

34. Mr. PELLET (Special Rapporteur) said he could not accept Mr. Daoudi’s latest proposal as it detracted from the clarity of the text. It had to be stated that the time period for assessing whether the communication had been made as soon as possible had to start from the date of the communication of the reservation to the depositary. Mr. Daoudi’s concerns had been very largely met by the revision he had just read out.

35. Mr. DAOUDI, responding to a suggestion by the CHAIR, said he would agree to the addition of a phrase at the end of paragraph (23) to sum up the views that he had just expressed.

*Paragraph (23), as amended, was adopted.*

Paragraph (24)

*Paragraph (24) was adopted with a minor editing change.*

*The commentary to guideline 2.1.6, as amended, was adopted.*

*Commentary to draft guideline 2.1.7 (Functions of depositaries)*

Paragraphs (1) to (14)

*Paragraphs (1) to (14) were adopted.*

*The commentary to guideline 2.1.7 was adopted.*

*Commentary to guideline 2.1.8 [2.1.7 bis]* (Procedure in case of manifestly [impermissible] reservations)

Paragraphs (1) to (3)

*Paragraphs (1) to (3) were adopted.*

Paragraph (4)

36. Mr. GAJA said that, as a result of an oversight on the part of the Commission as a whole, the reference to the need to “bring the question to the attention of ... where appropriate, the competent organ of the international organization concerned”, contained in paragraph 2 (b) of draft guideline 2.1.7, appeared to have been omitted from the text of draft guideline 2.1.8. A reference to that case should be inserted in paragraph 2 of the latter guideline.

37. Mr. PELLET (Special Rapporteur) said he was not sure that guidelines 2.1.7 and 2.1.8 covered the same cases. If the problem was truly one of substance, it would affect the text of the guideline itself, to which he was loath to revert at the present stage, except where there was found to be a manifest omission, which did not seem to be the case with draft guideline 2.1.8.

38. Mr. GAJA said the omission could be rectified by stating in the commentary that normally the depositary would be the secretary-general of the same organization, and that consequently there was no need to cover that case in the text of the draft guideline. But the Commission should not say it had covered that case, since it had not done so.

39. The CHAIR proposed deferring consideration of paragraph (4) pending informal consultations.

*It was so decided.*

Paragraphs (5) to (7)

*Paragraphs (5) to (7) were adopted.*

Paragraph 4 (conclusion)

40. Mr. GAJA said that, following informal consultations, it had been decided to suggest something rather unprecedented in order to solve the problem he had raised with regard to draft guideline 2.1.8. To remedy a simple but unfortunate omission, the text of the guideline should be aligned with that of guideline 2.1.7, thereby obviating the need to alter the commentary to guideline 2.1.8. Accordingly, he proposed that in paragraph 2 of guideline 2.1.8, the words “and, where appropriate, the competent organ of the international organization concerned” should be inserted before the word “indicating”.

*It was so decided.*

*Paragraph 4 was adopted.*

*The commentary to guideline 2.1.8 [2.1.7 bis] was adopted.*

2.4 Procedure for interpretative declarations

Paragraph (1)

*Paragraph (1) was adopted.*

*Commentary to guideline 2.4.1* (Formulation of interpretative declarations)

Paragraphs (1) to (3)

*Paragraphs (1) to (3) were adopted.*

Paragraph (4)

*Paragraph (4) was adopted with a minor drafting change.*

Paragraph (5)

*Paragraph (5) was adopted.*

*The commentary to guideline 2.4.1 was adopted.*

*Commentary to guideline [2.4.2 [2.4.1 bis]* (Formulation of an interpretative declaration at the internal level)]

Paragraph (1)

41. Mr. TOMKA said that, as a result of the submission of inaccurate information to him, the Special Rapporteur stated in paragraph (1) that in two cases, namely Estonia and Slovakia, only the Parliament had competence to formulate an interpretative declaration at the internal level. In point of fact, Slovakia was one of the States in which such competence was shared between the executive branch and the Parliament. Accordingly, the words “In two cases” should read “In one case”; “In thirteen cases” should read “In fourteen cases”, and the mention of Slovakia should be moved to the following footnote.

*Paragraph (1), as amended, was adopted.*

Paragraphs (2) and (3)

*Paragraphs (2) and (3) were adopted.*

*The commentary to guideline [2.4.2 [2.4.1 bis]], as amended, was adopted.*

*Commentary to guideline [2.4.3 [2.4.2, 2.4.9]* (Formulation and communication of conditional interpretative declarations)]

Paragraphs (1) to (4)

*Paragraphs (1) to (4) were adopted.*

Paragraph (5)

42. The CHAIR, speaking as a member of the Commission, proposed amending the word “identical” to read “substantially similar”.

43. Mr. PELLET (Special Rapporteur) said that in that case consideration would have to be given at some point in the future to the question of how the differences between the systems should be treated in the text of the guidelines themselves.

*Paragraph (5), as amended, was adopted.*

*The commentary to guideline [2.4.3 [2.4.2, 2.4.9]], as amended, was adopted.*

*Section C.2, as amended, was adopted.*

**A. Introduction (A/CN.4/L.618)**

Paragraphs 1 to 16

*Paragraphs 1 to 16 were adopted.*

*Section A was adopted.*

**B. Consideration of the topic at the present session (A/CN.4/L.618 and Add. 1 and 4)**

Paragraphs 17 and 18 (A/CN.4/L.618)

*Paragraphs 17 and 18 were adopted.*

Paragraph 19

44. Mr. PELLET (Special Rapporteur) objected to the use of the phrase “provisionally adopted” in paragraph 19, pointing out that it applied only to the last two of a whole series of draft guidelines listed in that paragraph and that it might create the impression that the draft guidelines could be revisited. In addition, he would like the Secretariat to include a paragraph to report the adoption of the commentaries to the draft guidelines, together with the relevant date and meeting number.

45. The CHAIR suggested that the words “provisionally adopted” should be replaced by “adopted on first reading”. As for mentioning the adoption of the commentaries, when text was adopted, the commentaries thereto were assumed to be adopted as well.

46. Mr. PELLET (Special Rapporteur) said that, as could be seen from the last paragraph of the introduction to section B of chapter V of the Commission’s report on diplomatic protection, there was indeed a precedent for including a separate paragraph on the adoption of the commentaries to texts.

47. After additional comments by the CHAIR, Mr. PELLET (Special Rapporteur) and Mr. TOMKA, the CHAIR said that the necessary addition would be made, paralleling what had been done in the part of the report on diplomatic protection.

*Paragraph 19, as amended, was adopted on that understanding.*

A/CN.4/L.618/Add.1

Paragraph 1

48. Mr. PELLET (Special Rapporteur) said that the word “retain”, in the last sentence, was incorrect. The point of the paragraph was that the human rights treaty bodies were quite flexible, that they refrained from taking a categorical stance on the validity of reservations. He accordingly proposed that the words “to retain them” should be replaced by “to take a decision on their validity”.

*Paragraph 1, as amended, was adopted.*

Paragraphs 2 to 29

*Paragraphs 2 to 29 were adopted.*

A/CN.4/L.618/Add.4

Paragraphs 1 to 5

*Paragraphs 1 to 5 were adopted.*

Paragraph 6

49. Mr. GAJA said that the phrase “which raised the question of contradictory obligations”, in the second sentence, was superfluous and incorrect and should be deleted.

50. Mr. PELLET (Special Rapporteur) said that the paragraph recorded remarks that he himself had made, and, although they might well be incorrect and he might accordingly be deserving of censure, the remarks should nevertheless remain in the text.

*Paragraph 6 was adopted.*

Paragraphs 7 to 12

*Paragraphs 7 to 12 were adopted.*

Paragraph 13

51. Mr. GAJA suggested that, in the footnote, the word “new” should be inserted between “gives rise to” and “questions”.

*Paragraph 13 was adopted, with the amendment to the footnote.*

Paragraphs 14 to 20

*Paragraphs 14 to 20 were adopted.*

*Section B, as amended, was adopted.*

**C. Draft articles on reservations to treaties provisionally adopted so far by the Commission (concluded) (A/CN.4/L.618/Add.2 and 3)**

1. TEXT OF THE DRAFT ARTICLES ON RESERVATIONS TO TREATIES (A/CN.4/L.618/Add.2)

*Section C.1, with the amendment to draft guideline 2.1.8 agreed earlier, was adopted.*

*Section C, as amended, was adopted.*

*Chapter IV, as amended, was adopted.*

*The meeting rose at 1 p.m.*

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**2749th MEETING**

*Thursday, 15 August 2002, at 10.05 a.m.*

*Chair: Mr. Robert ROSENSTOCK*

*Present: Mr. Addo, Mr. Al-Marri, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kamto, Mr. Kateka, Mr. Kemicha, Mr. Koskenniemi, Mr. Mansfield, Mr. Momtaz, Mr. Operti Badan, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Rodríguez Cedeño, Mr. Sepúlveda, Mr. Simma, Mr. Tomka, Ms. Xue, Mr. Yamada.*

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**Draft report of the Commission on the work of its fifty-fourth session (continued)**

**CHAPTER VI. Unilateral acts of States (A/CN.4/L.620 and Add.1 and 2)**

1. The CHAIR invited the members of the Commission to continue their consideration of the draft report, starting with chapter VI on unilateral acts of States.

**A. Introduction (A/CN.4/L.620)**

Paragraphs 1 to 11

*Paragraphs 1 to 11 were adopted.*

*Section A was adopted.*

**B. Consideration of the topic at the present session (A/CN.4/L.620 and Add. 1 and 2)**

Paragraph 12 (A/CN.4/L.620)

2. Mr. SIMMA said that there was no addendum 2 to document A/CN.4/525 and that the words “and 2” in parentheses should be deleted.

*Paragraph 12, as amended, was adopted.*

Paragraph 13

3. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) proposed that, following paragraph 13, a new paragraph 13 *bis* should be added to indicate that informal consultations had been held during which two particular aspects of the question had been considered and that, at the preceding meeting, the coordinator of the consultations had reported to the Commission. He would give the secretariat the text of the new paragraph.

*Paragraph 13 was adopted, subject to the addition of the said new paragraph.*

Paragraphs 14 to 20

*Paragraphs 14 to 20 were adopted.*

Paragraph 21

4. Mr. BROWNLIE proposed that the word “general” should be added before the word “international” in the second sentence.

*Paragraph 21, as amended, was adopted.*

Paragraphs 22 to 27

*Paragraphs 22 to 27 were adopted.*

Paragraph 28

5. Mr. RODRÍGUEZ CEDEÑO proposed that the word “literature” should be replaced by the word “doctrine”.

*Paragraph 28, as amended, was adopted.*

Paragraphs 29 to 33

*Paragraphs 29 to 33 were adopted.*

Paragraph 34

6. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) proposed that the words “under Chapter VII of the Char-