

Document:-
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Summary record of the 2749th meeting

Topic:

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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.

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.

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-

ter of the United Nations” should be added after the words “Security Council”.

Paragraph 34, as amended, was adopted.

Paragraphs 35 to 45

Paragraphs 35 to 45 were adopted.

A/CN.4/L.620/Add.1

Paragraph 1

7. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) said that the word “regretfully” in the second sentence of the paragraph should be deleted.

Paragraph 1, as amended, was adopted.

Paragraph 2

Paragraph 2 was adopted.

Paragraphs 3 to 13

8. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) said that the English and Spanish texts should be brought into line with the French text because the opinion referred to in paragraph 3 and in the following paragraphs was that of one member.

9. Mr. KOSKENNIEMI said it was his opinion that was being referred to and that he had expressed it during a lengthy statement.

10. Mr. DAOUDI, supported by Mr. SIMMA, said it should be indicated that the opinion of one member was being referred to, because it was a negative opinion of the codification of unilateral acts of States and the Commission must not give the impression that it shared that opinion.

11. Mr. CANDIOTI proposed that, in paragraph 3, the words “by a member” should be added after the words “the point was made”; in paragraph 4, the words “a practitioner’s” should be replaced by the word “this”; the words “According to this view” should be added at the beginning of paragraph 5; in the first sentence of paragraph 6, the words “by the same member” should be added after the words “it was stated”; and the following new paragraph 13 *bis* should be added after paragraph 13: “Some other members agreed with various aspects of the views described above.”

12. Following a discussion in which Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur), Mr. KOSKENNIEMI, Mr. KAMTO, Mr. OPERTTI BADAN, Ms. ESCARAMEIA, Mr. GAJA, Mr. MANSFIELD, Mr. KATEKA, Mr. PAMBOU-TCHIVOUNDA, Mr. KEMICHA and the CHAIR took part, it was decided that the proposal by Mr. Candiotti should be adopted.

Paragraphs 3 to 13, as amended, and the new paragraph 13 bis were adopted.

Paragraph 14

Paragraph 14 was adopted.

Paragraph 15

13. Mr. KAMTO said that, as the author of the views summarized in the paragraph, he would like the words *entité juridique* in the second sentence of the French version to be replaced by the words *être juridique*, which he had used in his statement.

14. Mr. CANDIOTI, supported by Mr. OPERTTI BADAN, said that the translation of those words into Spanish might give rise to problems. The word *fenómeno* or the word *hecho* should be used instead.

15. Mr. BROWNLIE, supported by Mr. SIMMA, proposed that, in the last sentence, the words “to create institutions”, which were confusing, should be replaced, especially in the languages other than English, by the words “to create intellectual concepts”.

16. Mr. KOSKENNIEMI said that paragraph 15 referred to paragraph 6, which expressed the idea that unilateral acts did not exist as a legal institution. In his opinion, it might be confusing if an expression other than “legal institution” was used in paragraph 15. He would nevertheless not insist that it should be retained.

Paragraph 15, as amended by Mr. Brownlie, was adopted.

Paragraph 16

17. Mr. KATEKA proposed that the word “Members” should be replaced by the words “Some members”.

Paragraph 16, as amended, was adopted.

Paragraphs 17 to 20

Paragraphs 17 to 20 were adopted.

Paragraph 21

18. Mr. GAJA noted that the question of which body was competent to make a promise did not relate only to parliaments or Governments. It could also concern, for instance, governors of federate States when the decision not to carry out a death sentence came within their competence.

19. Mr. CHEE said that the words “its parliament or its Government” were not appropriate.

20. Mr. SIMMA said that the paragraph reflected one of his statements in which he had raised the problem of the extradition to Turkey of persons in Germany. The legal question that arose was whether it was enough for the Turkish Government to undertake not to execute the persons who would be extradited or whether the Turkish Parliament should also make such a promise. He therefore did not want the first sentence to be amended. The second sentence did not clearly reflect what he had said, and he proposed that it should be amended to read: “This demonstrated that the articles proposed by the Special Rapporteur on the representation of States in the formulation of unilateral acts corresponded to particular needs.”

Paragraph 21, as amended, was adopted.

Paragraphs 22 to 24

Paragraphs 22 to 24 were adopted.

Paragraph 25

21. Mr. SEPÚLVEDA said that he would like reference to be made to some of the views which he had expressed and which were not reflected in the draft report. He had stated, for example, that the practice of the recognition of States was no longer in force because, when the United Nations admitted a new Member State, there was in a sense no need for the official recognition of that State. He had also indicated that, in the case of some States, the recognition of States had ceased to be a unilateral act because Governments were no longer recognized. It was quite simply decided that diplomatic relations should either be maintained or broken off. He had also referred to the conditions for the collective recognition of a State laid down by the European Union. He had pointed out that the addressees of unilateral acts of States could be not only States and international organizations but also national liberation movements. He had expressed a number of views on promise and the invalidity of some acts, which were also not reflected in the report. He would submit a text to the Commission summarizing all those points.

Paragraph 25 was adopted, subject to the addition of the text to be submitted by Mr. Sepúlveda.

Paragraphs 26 to 28

Paragraphs 26 to 28 were adopted.

Paragraph 29

22. Mr. KOSKENNIEMI proposed that, in the second sentence, the word “inability” should be replaced by the word “failure”, and that the other language versions should be amended accordingly.

23. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) said that, in the first sentence of the Spanish text, the word *clasificar* should be replaced by the words *incluirse en la clasificación*.

Paragraph 29, as amended by Mr. Koskenniemi and Mr. Rodríguez Cedeño, was adopted.

Paragraphs 30 to 32

Paragraphs 30 to 32 were adopted.

Paragraph 33

24. Ms. ESCARAMEIA proposed that, in the first sentence, the word “although” should be replaced by the words “even if”, which better reflected the idea expressed.

Paragraph 33, as amended, was adopted.

Paragraph 34

Paragraph 34 was adopted.

Paragraph 35

25. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur), supported by Mr. OPERTTI BADAN, said that the Spanish word *trampas* was unacceptable. He proposed that the sentence should be amended to read: *...medios a los que los Estados recurrían...*

26. Mr. PELLET said that he wanted to keep the word *piège*, which he had used deliberately. It would be absurd to say that States resorted involuntarily to voluntary acts.

27. Mr. CANDIOTI proposed that the third sentence should be amended to read: “Unilateral acts, like treaties, could lead to situations in which States were caught against their will.”

28. Mr. PELLET said that he could accept that proposal, although it watered down the text.

Paragraph 35, as amended by Mr. Candioti, was adopted.

Paragraphs 36 and 37

Paragraphs 36 and 37 were adopted.

Paragraph 38

29. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) said that the word *inacceptable* (unacceptable) in the first sentence was too strong. The wording of the sentence should be brought into line with that of the French text.

Paragraph 38, as amended, was adopted on the understanding that the Spanish version would be changed as indicated.

Paragraphs 39 to 42

Paragraphs 39 to 42 were adopted.

Paragraphs 43 and 44

30. Mr. KOSKENNIEMI said that, in order to make the text more logical, the first sentence of paragraph 44 should be moved to the beginning of paragraph 43.

Paragraphs 43 and 44, as amended, were adopted.

Paragraphs 45 to 66

Paragraphs 45 to 66 were adopted.

Paragraphs 67 and 68

31. Mr. GAJA said that the second sentence of paragraph 67 did not mean anything and should be deleted. The first sentence of paragraph 68 should be amended to read: "It was stated that invalidity should be regarded as invocable by any State, not only when a unilateral act was contrary to a peremptory norm of international law, but also in the event of the threat or use of force."

Paragraphs 67 and 68, as amended, were adopted.

Paragraph 69

Paragraph 69 was adopted.

Paragraph 70

32. Mr. SIMMA said that the last part of the sentence was badly designed because it might imply that decisions of the Security Council were invalid, something that was not the case.

33. The CHAIR proposed that paragraph 70 as a whole should be deleted.

It was so decided.

Paragraphs 71 to 83

Paragraphs 71 to 83 were adopted.

A/CN.4/L.620/Add.2

Paragraph 1

34. Mr. TOMKA proposed that, in the second sentence, the words "to codify unilateral acts" should be replaced by the words "to codify the rules relating to unilateral acts".

35. Ms. ESCARAMEIA said that, if the proposal was accepted, the end of the sentence would have to be amended, for example, by replacing the words "they did not exist

as such in international law" by the words "such acts did not exist as such in international law".

36. Mr. MANSFIELD said that the end of the sentence should simply be deleted. The sentence would thus end with the words "unilateral acts".

37. Mr. KAMTO, supported by Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur), said that the sentence should be retained because it faithfully reflected what had been stated during the debate.

38. Following a discussion in which Mr. TOMKA, Mr. KOSKENNIEMI, Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) and the CHAIR took part, it was decided that the second sentence should be retained, with the amendments proposed by Mr. Tomka and Ms. Escarameia.

Paragraph 1, as amended, was adopted.

Paragraphs 2 to 20

Paragraphs 2 to 20 were adopted.

Section B, as amended, was adopted.

Chapter VI, as amended, was adopted.

CHAPTER VIII. *The responsibility of international organizations* (A/CN.4/L.624)

39. The CHAIR, replying to a question by Mr. Pellet, said that no change could in principle be made to the text of the document under consideration because it contained the report of a working group, which had already been adopted by the Commission. He therefore proposed that sections A and B should be considered together, followed by section C.

A. Introduction; B. Consideration of the topic at the present session

Sections A and B were adopted.

C. Report of the Working Group

Section C was adopted.

Chapter VIII was adopted.

CHAPTER IX. *The fragmentation of international law: difficulties arising from the diversification and expansion of international law* (A/CN.4/L.625)

40. The CHAIR invited the members of the Commission to consider chapter IX in the same way as chapter VIII.

A. Introduction

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraph 4

Paragraph 4 was adopted.

Paragraph 5

41. Mr. SIMMA said that, in the corresponding footnote, Mr. Mansfield's name should be included among those of the members of the Study Group.

Paragraph 5, as amended, was adopted.

Paragraph 6

42. The CHAIR said that, since the report of the Study Group had been amended, the words "as amended" should be added after the words "Study Group" in the second line.

*Paragraph 6, as amended, was adopted.**Section B, as amended, was adopted.***C. Report of the Study Group**

Paragraphs 7 to 9

Paragraphs 7 to 9 were adopted.

Paragraph 10

43. Mr. SIMMA said that the square brackets around the sixth sentence in the English text should be deleted.

Paragraph 10, as amended, was adopted.

Paragraphs 11 to 25

*Paragraphs 11 to 25 were adopted.**Section C, as amended, was adopted.**Chapter IX, as amended, was adopted.*

CHAPTER VII. International liability for injurious consequences arising out of acts not prohibited by international law (international liability in case of loss from transboundary harm arising out of hazardous activities) (A/CN.4/L.621)

A. Introduction

Paragraphs 1 to 11

*Paragraphs 1 to 11 were adopted.**Section A was adopted.***B. Consideration of the topic at the present session**

Paragraph 12

*Paragraph 12 was adopted.**Section B was adopted.***C. Report of the Working Group**

Paragraphs 13 to 28

*Paragraphs 13 to 28 were adopted.**Section C was adopted.**Chapter VII was adopted.*

CHAPTER X. Other decisions and conclusions of the Commission (A/CN.4/L.626 and Add.1)

A. Programme, procedures and working methods of the Commission, and its documentation (A/CN.4/L.626 and Add.1)

Paragraphs 1 and 2 (A/CN.4/L.626)

Paragraphs 1 and 2 were adopted.

Paragraph 3

Paragraph 3 was adopted, on the understanding that it would be completed by the Secretariat.

44. The CHAIR invited the members of the Commission to consider the remainder of section A of chapter X, as contained in document A/CN.4/L.626/Add.1.

1. NEW TOPICS

Paragraphs 1 to 3

*Paragraphs 1 to 3 were adopted.***2. WORK PROGRAMME OF THE COMMISSION FOR THE REMAINDER OF THE QUINQUENNIAL**

Paragraph 4

Paragraph 4 was adopted.

Paragraph 5

45. Mr. TOMKA said that, in the work programme for 2005, reference was made, in connection with unilateral acts of States, to the "Eighth report of the Special Rapporteur on rules applicable to unilateral acts not referred to in the second part", but the eighth report was also in the second part. The words "the second part" should therefore be replaced by the words "the seventh report".

Paragraph 5, as amended, was adopted.

3. LONG-TERM PROGRAMME OF WORK

Paragraph 6

Paragraph 6 was adopted.

4. PROCEDURES AND METHODS OF WORK

Paragraphs 7 and 8

Paragraphs 7 and 8 were adopted.

5. COST-SAVING MEASURES

Paragraph 9

Paragraph 9 was adopted.

6. HONORARIA

Paragraphs 10 to 14

Paragraphs 10 to 14 were adopted.

Paragraph 15

46. Following a discussion in which Mr. SIMMA, Mr. PELLET and Mr. CANDIOTI took part on the question whether the word "honoraria" should be in the singular to show how usual a symbolic honorarium was or whether it should be kept in the plural, it was decided that the plural should be used and that the words "collect it" should be replaced by the words "collect them".

Paragraph 15, as amended, was adopted.

Paragraph 16

Paragraph 16 was adopted.

Section A, as amended, was adopted.

The meeting rose at 1.05 p.m.

2750th MEETING

Friday, 16 August 2002, at 10.05 a.m.

Chair: Mr. Robert ROSENSTOCK

Present: Mr. Addo, Mr. Al-Marri, Mr. Brownlie, Mr. Candiotti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kamto, Mr. Kateka, Mr. Kemicha, Mr. Koskenniemi, Mr. Mansfield, Mr. Momtaz, Mr. Oportti Badan, Mr. Pellet, Mr. Sepúlveda, Mr. Simma, Mr. Tomka, Ms. Xue, Mr. Yamada.

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

CHAPTER X. *Other decisions and conclusions of the Commission (concluded)* (A/CN.4/L.626 and Add.1)

B. *Date and place of the fifty-fifth session* (A/CN.4/L.626)

Paragraph 4

Paragraph 4 was adopted.

Section B was adopted.

C. *Cooperation with other bodies*

Paragraphs 5 to 9

Paragraphs 5 to 9 were adopted.

Section C was adopted.

D. *Representation at the fifty-seventh session of the General Assembly*

Paragraph 10

Paragraph 10 was adopted.

Paragraph 11

1. The CHAIR said that it was the recommendation of the Bureau that Mr. Dugard, who had produced a number of articles that would, he hoped, be discussed in some detail, should be chosen to represent the Commission, together with the Chair, at the fifty-seventh session of the General Assembly.

It was so decided.

Paragraph 11 was adopted.

Section D was adopted.

E. *International Law Seminar*

Paragraphs 12 to 24

Paragraphs 12 to 24 were adopted.

Section E was adopted.

Chapter X, as amended, was adopted.

CHAPTER II. *Summary of the work of the Commission at its fifty-fourth session* (A/CN.4/L.616)

Paragraphs 1 to 5

Paragraphs 1 to 5 were adopted.