Document:-
A/CN.4/SR.2785

Summary record of the 2785th meeting

Topic:
Adoption of the report

Extract from the Yearbook of the International Law Commission:-
2003, vol. I

2785th MEETING

Monday, 4 August 2003, at 3.05 p.m.

Chair: Mr. Enrique CANDIOTI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Chee, Mr. Comissário Afonso, Mr. Dugard, Mr. Economides, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kateka, Mr. Kolodkin, Mr. Mansfield, Mr. Matheson, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Yamada.

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

Chapter V. *Diplomatic protection* (concluded) (A/CN.4/L.637 and Add.1–4)

1. The CHAIR invited the members of the Commission to continue their consideration of chapter V, section B, of the draft report of the Commission on the work of its fifty-fifth session.

B. Consideration of the topic at the present session (*continued*) (A/CN.4/L.637 and Add.1 and 4)

Paragraph 19 (*concluded*) (A/CN.4/L.637/Add.1)

2. Mr. MOMTAZ questioned the need for the last part of the first sentence, which read: "given that decisions of ICJ were not binding on the Commission". He suggested deleting it, particularly in view of the reference in the last sentence to the *Barcelona Traction* case as a true reflection of customary international law.

3. Mr. PELLET recalled that the Special Rapporteur had specifically mentioned in his report the fact that the decisions of ICJ were not binding on the Commission. It was therefore for him to decide whether that part of the sentence should be deleted.

4. Mr. DUGARD (Special Rapporteur) confirmed that statement and said he had even cited instances in which the Commission had not followed the decisions of ICJ. He was therefore in favour of retaining the last part of the sentence.

5. Mr. BROWNLIE said that, since the Commission was a deliberative body and not one that dealt with cases, the question of whether it should be bound by the decisions of ICJ did not arise.

6. Mr. DUGARD (Special Rapporteur) recalled that the issue at stake had been whether the Commission could disregard the *Barcelona Traction* case and formulate rules of its own. He had made it clear at the very outset that it was possible to do so, and the debate had proceeded on that basis. The last part of the first sentence might well be considered tautological, but the first part, which stated that it was for the Commission to decide on such matters, must be retained.

7. Mr. ECONOMIDES endorsed the suggestion by Mr. Momtaz. As currently worded, the phrase in question might give the impression that the judgments of ICJ were worthless. If the phrase were not deleted then a more accurate formulation should be found.

8. Mr. BROWNLIE suggested the wording "given that decisions of ICJ were not necessarily binding on the Commission given the different responsibilities of the two bodies". That would make it quite clear that the Commission was not in competition with the Court.

9. Mr. DUGARD (Special Rapporteur) endorsed that suggestion.

10. The CHAIR said that, if he heard no objection, he would take it that the Commission wished to adopt the wording suggested by Mr. Brownlie, but he suggested, to avoid repetition, that "given the different responsibilities of the two bodies" should read "bearing in mind the different responsibilities of the two bodies".

It was so decided.

11. Mr. DUGARD (Special Rapporteur) recalled that at the previous meeting Mr. Brownlie had drawn attention to an inconsistency between the second sentence of paragraph 19 and paragraph 51. Further to consultations with Mr. Brownlie, he would suggest that the first part of the second sentence should be reworded to read: "He observed that, in the *ELSI* case, although the Chamber of the Court was there dealing with the interpretation of a treaty and not customary international law, it had overlooked the *Barcelona Traction* case…".

Paragraph 19, as amended, was adopted.

Paragraphs 20 to 23

Paragraphs 20 to 23 were adopted.

Paragraph 24

12. Mr. GAJA said that, in the light of the amendment to paragraph 19, paragraph 24 would need to be expanded slightly to make it quite clear that the *ELSI* case by no means contradicted *Barcelona Traction*, as had been pointed out during the debate on the subject. He suggested that, after the first sentence, a new sentence should be inserted to read: "This was held not to be contradicted in the *ELSI* case."

Paragraph 24, as amended, was adopted.

Paragraphs 25 to 37

Paragraphs 25 to 37 were adopted.

Paragraph 38

13. Mr. DUGARD (Special Rapporteur) enquired as to the status of the text of article 17, which had been adopted by consensus in the Drafting Committee as a working basis for discussion at the fifty-sixth session. Perhaps some reference should be made to it in the paragraph.

14. Mr. MANSFIELD (Rapporteur) said he agreed with the Special Rapporteur. The paragraph was somewhat misleading, as it merely reproduced the text referred by the Working Group to the Drafting Committee, when in fact the Committee had reached consensus on a text.

15. Mr. KATEKA (Chair of the Drafting Committee) said that technically, since he had not reported to plenary on the outcome of the Drafting Committee's discussion on article 17, the matter should be held in abeyance until the next session. However, it was essential that discussion should not be reopened on the subject as a result.

16. Mr. GAJA drew attention to paragraph 14 of document A/CN.4/L.637, which stated that at its 2764th meeting the Commission had decided to refer article 17 to the Drafting Committee. It would be helpful for whoever was reading paragraph 38 of the document now under consideration to know exactly what the status of the article was. Perhaps a new sentence could be added to that effect. Moreover, for the sake of consistency, information on the status of all texts referred to the Drafting Committee should be included throughout the report.

17. The CHAIR said that paragraph 14 of document A/CN.4/L.637 would seem to meet the Special Rapporteur's concern.

18. Mr. DUGARD (Special Rapporteur) said his main concern was that the whole issue would not be reopened for discussion at the fifty-sixth session, given that the Drafting Committee had met twice to discuss the text and had reached consensus on it.

19. Mr. PELLET said he felt uncomfortable about mentioning something in the report which had not been reported to plenary earlier in the session. He assured the Special Rapporteur that the whole issue would not be reopened for discussion at the next session.

20. The CHAIR said that the Secretary had noted the status of the text and the concerns expressed, which would be taken into account when dealing with it at the next session. On that understanding, he would take it that the Commission wished to retain the text of paragraph 38 as it stood.

It was so decided.

Paragraphs 39 to 44

Paragraphs 39 to 44 were adopted.

Paragraph 45

21. Mr. PELLET, referring to the penultimate sentence, questioned the appropriateness of the phrase in the French text *plusieurs conventions d'investissement* given that more than 2,000 investment conventions were involved. He suggested that it should be replaced by the words *un grand nombre de conventions d'investissement*.

22. Mr. GAJA suggested that in the English text the word "conventions" be replaced by "treaties".

23. Mr. BROWNLIE suggested by way of solution that the phrase "treaties and conventions" might be used, as was sometimes done in English text.

24. The CHAIR endorsed Mr. Gaja's suggestion, which was in line with the wording of the 1969 and 1986 Vienna Conventions.

25. Mr. DUGARD (Special Rapporteur), supported by Mr. Sreenivasa RAO, also stated a preference for the word "treaties". He had used that term in his report when referring to bilateral investment treaties.

26. Mr. PELLET said that the word *conventions* should be retained in the French version.

Paragraph 45, as amended, was adopted.

Paragraphs 46 to 48

Paragraphs 46 to 48 were adopted.

Paragraph 49

27. Mr. ECONOMIDES said that the last sentence of the paragraph did not read very well, at least in the French version.

28. Mr. DUGARD (Special Rapporteur) agreed and suggested that the text should be reworded: "His own view was that a customary rule was developing and that the Commission should be encouraged to engage in progressive development of the law in this area, if necessary. However, it should do so with great caution."

Paragraph 49, as amended, was adopted.

Paragraphs 50 to 69

Paragraphs 50 to 69 were adopted.

C. Draft articles on diplomatic protection provisionally adopted so far by the Commission (A/CN.4/L.637/Add.2 and 3)

1. Text of the draft articles (A/CN.4/L.637/Add.2)

Article 9 [11] (Categories of claims)

29. Mr. PELLET said that he was about to take a course of action of which he strongly disapproved: he wished to call into question the title of draft article 9 [11], even though it had already been adopted. The use of the French word *classement*, which the multilingual Mr. Gaja had told him translated into English as "shelving", was, however, totally inappropriate. That was not what draft article 9 [11] dealt with. At the very least, therefore, he would wish to see the French text aligned with the English word "classification". Even in English, however, "classification" was not quite right. The expression "characterization of claims" (and in French *qualification des réclamations*) would be preferable.

30. Mr. DUGARD (Special Rapporteur) said that his original title had been "Nature of claims", which had been judged too bland. Mr. Pellet's suggestion was acceptable to him if it commanded general support.

31. Mr. BROWNLIE said he feared he had been a member of the language group that had endorsed the title. Although not ideal, "characterization" of claims was greatly preferable to "classification".

32. Ms. ESCARAMEIA suggested that the simplest solution would be to use the expression "types of claims". The French version would be *types* and the Spanish *tipos*.

33. Mr. PELLET suggested the word "categories", which, like "types", was virtually the same in all three languages.

34. Mr. DUGARD (Special Rapporteur) concurred. "Categories" had the same meaning as "types" but was more elegant. The episode should be a lesson to the Commission that, in its satisfaction at drafting an acceptable text, it should not overlook other details.

35. The CHAIR, after expressing his concern that the Commission was breaking with every known precedent, said that, if he heard no objection, he would take it that the title of draft article 9 [11] should be amended to "Categories of claims".

Section C.1, as amended, was adopted.

B. Consideration of the topic at the present session (*concluded*) (A/CN.4/L.637 and Add.1 and 4)

Paragraphs 70 and 71 (A/CN.4/L.637/Add.4)

Paragraphs 70 and 71 were adopted.

Paragraph 72

36. The CHAIR said that the words "article 5" in the second sentence of the English text should read "article 55".

Paragraph 72, as amended, was adopted.

Paragraphs 73 to 77

Paragraphs 73 to 77 were adopted.

Paragraph 78

37. Ms. ESCARAMEIA said that the last sentence of the paragraph did not fully reflect the debate. She—and, she believed, others—had said that the provision should not be recast as a rule of priority. In order, therefore, to avoid giving the impression that the remedy in question must be exhausted before diplomatic protection could apply, she suggested that the following sentence might be added at the end of the paragraph: "The view was also expressed that a regime of priority could not be presumed, and that a 'special regime' could not always be seen as the remedy that needed to be exhausted before diplomatic protection could apply."

Paragraph 78, as amended, was adopted.

Paragraphs 79 to 84

Paragraphs 79 to 84 were adopted.

Paragraph 85

38. Mr. GAJA said he welcomed the inclusion of the paragraph. Indeed, it was the kind of paragraph that he would have welcomed at the conclusion of the previous discussion: it would be very useful for the reader to be informed that a given draft article had been referred to the Drafting Committee, without needing to consult other documents to see what action had been taken.

39. Mr. MIKULKA (Secretary of the Commission) said that the paragraph had been included because of the specific nature of its content. Since the question of referring articles to the Drafting Committee was traditionally dealt with in another part of the report, it would, rather, be confusing to insert such paragraphs elsewhere, since the expectation would be raised that similar wording would be found in other chapters.

40. Mr. Sreenivasa RAO said that inverted commas should be inserted around the words "without prejudice".

41. Mr. ECONOMIDES said that, according to his recollection, the decision had not been as clear-cut as was indicated in the paragraph. The suggestion that the provision should be reformulated as a "without prejudice" clause had been forcefully made, but other views had been expressed. The second half of the sentence should be made less categorical with the addition of a phrase such as "in particular".

42. Mr. DUGARD (Special Rapporteur) recalled that the paragraph reflected the Chair's support of the provision, which he himself had proposed should be deleted. There had been little discussion but general agreement with the Chair's proposal to refer the provision to the Drafting Committee. It had been felt that it would be useful to reach agreement on a clause that retained the notion of the "special regime" but did not prejudice other regimes, particularly diplomatic protection.

43. The CHAIR acknowledged that he had seen some merit in retaining a clause that contemplated the existence of other regimes, such as bilateral investment treaties or human rights treaties. Such a clause should be of a general nature and should appear at the end of the draft articles, so that special regimes could be retained without necessarily being made *lex specialis.*

44. Mr. MATHESON confirmed that a "without prejudice" clause had been only one of several possibilities. He therefore suggested that the second half of the paragraph should be reworded along the following lines: "… with a view to having it reformulated and located at the end of the draft articles—for example, as a 'without prejudice' clause".

Paragraph 85, as amended, was adopted.

Paragraphs 86 to 89

Paragraphs 86 to 89 were adopted.

Paragraph 90

45. Mr. GAJA said that two words had been omitted from the last sentence, which should read: "… provided that the place of management is located or registration takes place in the territory of the same State".

Paragraph 90, as amended, was adopted.

Paragraph 91

Paragraph 91 was adopted.

Paragraph 92

46. Ms. ESCARAMEIA suggested that the first word, "Several", should be replaced by "Some"; according to her recollection, only one person had expressed concern about the resort to diplomatic protection for the benefit of legal persons other than corporations, which was consistent with the view described in paragraph 93 that the Commission should not draft rules on the diplomatic protection of other legal persons. The opposite point had also been made: that States could always protect any other legal person. The following sentence should be added at the end of the paragraph: "Other speakers thought that diplomatic protection extended to all other legal persons, including non-governmental organizations, and that, anyway, States had always the discretionary power of protecting their own nationals."

47. Mr. DUGARD (Special Rapporteur) said that he supported the proposal, which more accurately reflected the balance of the debate.

48. Mr. KATEKA (Chair of the Drafting Committee) proposed that the second half of the proposed text should be reworded along the following lines: "… and that in any case States had the discretionary right to protect their own nationals".

49. Mr. RODRÍGUEZ CEDEÑO said that some explanatory phrase ought to be added to the term "non-governmental organizations". He therefore proposed that a phrase should be inserted after "organizations", namely, "the establishment and functioning of which were generally governed by the domestic law of those States".

Paragraph 92, as amended, was adopted.

Paragraphs 93 to 97

Paragraphs 93 to 97 were adopted.

Section B, as amended, was adopted.

C. Draft articles on diplomatic protection provisionally adopted so far by the Commission (*concluded*)

2. Text of the draft articles with commentaries thereto adopted by the Commission at its fifty-fifth session (A/CN.4/L.637/Add.3)

Commentary to article 8 [10] (Exhaustion of local remedies)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

50. Mr. GAJA pointed out that, although all mention of the burden of proof had been removed from the article itself, it had reappeared in the commentary, and, in that connection, he was against the reference to the *ELSI* case, where it had been stated that the burden of proof was on the defendant, because in that case no distinction had been drawn between the existence of remedies and their effectiveness. He therefore urged the deletion of any allusion to the burden of proof and to the *ELSI* case.

51. Mr. DUGARD (Special Rapporteur) said that, while he could see the justification for dropping a reference to the *ELSI* case, he wondered if it was wise to omit all reference to the burden of proof, because the Commission had debated the matter at some length and some mention of it in the commentary would show that the Commission was aware of that thorny issue. Moreover, the commentary did distinguish between the two situations.

52. Mr. GAJA said that, after the protracted discussion to which the Special Rapporteur had alluded, many Commission members had decided that it was not proper to deal with the question of the burden of proof in a draft article, and therefore the commentary should also be silent on the matter. The rules on burden of proof varied tremendously, and even in the case law of the European Court of Human Rights those rules were evolving. As a compromise, he suggested that reference should be made to the subject in a footnote.

53. Mr. DUGARD (Special Rapporteur) said that most studies on the exhaustion of local remedies touched on the burden of proof and the Commission should not convey the impression that it had ignored the matter, particularly as the Commission had expunged the adjectives "adequate and effective" from the reference to local remedies. For that reason, he suggested inserting the word "generally" before "on the applicant State" and starting the footnote with the phrase "See also the *ELSI* case".

Paragraph (4), as amended, was adopted.

Paragraph (5)

Paragraph (5) was adopted with minor drafting changes.

Paragraph (6)

54. Mr. GAJA said that he was not in favour of quoting the *Finnish Ships Arbitration* as an authority that "all the contentions of fact and propositions of law which are

brought forward by the claimant Government … must have been investigated and adjudicated upon by the municipal courts" [p. 1502], because it established too stringent a test. He would rather use language from the *ELSI* case, namely, "for an international claim to be admissible, it is sufficient if the essence of the claim has been brought before the competent tribunals and pursued as far as permitted by local law and procedures, and without success" [p. 46, para. 59]. That criterion was more recent, more accurate and more flexible. Reference could be made to the *Finnish Ships Arbitration* in the footnote.

55. Mr. PELLET agreed with Mr. Gaja and recommended that the whole text of the paragraph should be reformulated.

56. Mr. DUGARD (Special Rapporteur) suggested the following wording:

> "In order to satisfactorily lay the foundation for an international claim on the ground that local remedies have been exhausted, the foreign litigant must raise the arguments he intends to raise in international proceedings in the municipal proceedings. In the *ELSI* case the Chamber of ICJ stated that, 'for an international claim to be admissible, it is sufficient if the essence of the claim has been brought before the competent tribunals and pursued as far as permitted by local law and procedures, and without success'. This test is preferable to the stricter test enunciated in the *Finnish Ships Arbitration* that 'all the contentions of fact and propositions of law which are brought forward by the claimant Government … must have been investigated and adjudicated upon by the municipal courts'. The foreign litigant must therefore produce the evidence available to him to support the essence of his claim in the process of exhausting local remedies."

The last sentence would not be amended.

57. The CHAIR noted that the footnotes would be modified accordingly.

Paragraph (6), as amended, was adopted.

The commentary to article 8 [10], as amended, was adopted.

Commentary to article 9 [11] (Categories of claims)

Paragraph (1)

58. Mr. GAJA said that he objected to the last sentence of the paragraph, as the principle cited was often invoked in the context of jurisdictional immunity, whereas in the case in point the foreign State had no immunity and there was no reason why it should not use local foreign courts. The sentence should be deleted, because it might confuse the reader, as it referred to a case in which the foreign State had been a defendant and was therefore inappropriate.

Paragraph (1), as amended, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted with minor drafting changes.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were adopted.

The commentary to article 9 [11], as amended, was adopted.

Commentary to article 10 [14] (Exceptions to the local remedies rule)

Paragraph (1)

Paragraph (1) was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted with minor drafting changes.

Paragraph (4)

Paragraph (4) was adopted.

Paragraph (5)

Paragraph (5) was adopted with minor drafting changes.

Paragraphs (6) and (7)

Paragraphs (6) and (7) were adopted.

Paragraph (8)

Paragraph (8) was adopted with minor drafting changes.

Paragraph (9)

59. Mr. PELLET raised the question of italicization of Latin names and in references to the cases cited in Commission documents.

60. Mr. MIKULKA (Secretary of the Commission) undertook to check the editorial rules on italicization.

Paragraph (9) was adopted with minor drafting changes.

Paragraph (10)

61. Mr. MOMTAZ drew attention to the word "accidentally" in the first sentence, referring to the shooting down of an aircraft, and said it was not for the Commission to say whether such an action was taken "accidentally" or not. In some of the cases given as examples, the question was still at issue between the countries concerned. The word "accidentally" should be deleted. In the third sentence, relating to the aerial incident between Iran and the United States, the words *ex gratia* which appeared in the English version had been omitted in the French. It was important to know which text was authoritative. Since the

United States had never acknowledged a breach of international law, he questioned whether the case was relevant in the context of diplomatic protection.

62. Mr. MATHESON said it was a measure of the extent of Iranian-American cooperation that he, too, questioned the relevance of the case. Paragraph (10) of the commentary was intended to provide practical examples of cases in which States agreed to do away with the exhaustion of local remedies as a precondition for permitting certain kinds of claims. The *Aerial Incident of 3 July 1988* case between the United States and Iran had involved an offer of *ex gratia* payment, not a legal claim, and had certainly not entailed overlooking the exhaustion of local remedies rule as a precondition for bringing claims. He accordingly suggested that the sentence be deleted.

63. Mr. BROWNLIE said that, while the precedents given in paragraph (10) of the commentary should not be entirely ignored, he had doubts about whether they constituted viable examples: they were bargained settlements on an *ex gratia* basis. The claim by Pakistan against India (*Aerial Incident of 10 August 1999*) had involved the destruction of a State aircraft, and the local remedies rule would not have been applicable in any event.

64. Mr. CHEE said he endorsed Mr. Momtaz's comments. The shooting down of an aircraft, even if "accidental", was prohibited by the relevant article of the Protocol relating to an amendment to the Convention on International Civil Aviation (art. 3 *bis*), adopted by ICAO in 1984. If an aircraft, whether military or passenger, strayed into foreign airspace, the country concerned had to guide it to land at the nearest airport.

65. Mr. DUGARD (Special Rapporteur) said it was a pity the issue had not been raised earlier, but it did seem that paragraph (10) of the commentary had been shot down. If the Commission wished, he would try to salvage it, perhaps by deleting the first part relating to aircraft destruction and retaining the second part on transboundary environmental damage.

66. Mr. GALICKI pointed out that the example given in the last sentence was not appropriate inasmuch as the Convention on International Liability for Damage Caused by Space Objects established a special regime which could not be treated as support for the thesis advanced in paragraph (10). It had already been agreed that self-contained regimes should not be taken into account because they used specific systems applicable only to the situations governed by the relevant conventions.

67. Mr. ECONOMIDES said that, while some of the examples given in paragraph (10) might need to be deleted, the references in the footnotes of the paragraph to specific precedents should be retained. A solution might be to retain the first sentence, deleting the word "accidentally", and to attach a single footnote that combined the footnotes of the paragraph.

68. Mr. PELLET said that was not really a proper solution. If the examples were not pertinent, they remained so irrespective of whether they were placed in the text or in footnotes.

69. After further contributions to the discussion from Mr. BROWNLIE and Mr. CHEE, the CHAIR suggested that the Special Rapporteur be assigned the task of revising the paragraph in the light of the comments made.

70. Mr. DUGARD (Special Rapporteur) said that he would prefer to see the entire paragraph deleted.

It was so decided.

Paragraphs (11) to (18)

Paragraphs (11) to (18) were adopted.

The commentary to article 10 [14], as amended, was adopted.

Section C.2, as amended, was adopted.

Chapter V of the report, as amended, was adopted.

71. Mr. DUGARD (Special Rapporteur) thanked the members of the Commission for the careful reading they had given to the commentary and for all the corrections, editorial as well as substantive, that they had proposed. Their efforts ensured that the commentary did what it was supposed to do, namely, reflect the views of the Commission.

Chapter VIII. *Reservations to treaties* (A/CN.4/lL.640 and Add.1–3)

A. Introduction (A/CN.4/L.640/Add.1)

Paragraphs 1 to 9

Paragraphs 1 to 9 were adopted with a minor editing change in paragraph 5.

Paragraphs 10 to 15

72. Mr. PELLET (Special Rapporteur) queried the use of the words "the Commission provisionally adopted" in paragraphs 10, 13 and 15. It was his understanding that the draft guidelines in question had been adopted on first reading.

73. The CHAIR pointed out that a text was adopted on first reading only when all of its constituent elements were available. The Secretariat would investigate the situation and ensure consistency throughout the draft report further to the comments by the Special Rapporteur.

Paragraphs 10 to 15 were adopted.

Paragraphs 16 and 17

Paragraphs 16 and 17 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session (A/CN.4/L.640 Add.1–3)

Paragraphs 18 to 21 (A/CN.4/L.640/Add.1)

Paragraphs 18 to 21 were adopted.

C. Draft guidelines on reservations to treaties provisionally adopted so far by the Commission (A/CN.4/L.640 and Add.1)

1. TEXT OF THE DRAFT GUIDELINES (A/CN.4/L.640/Add.1)

Paragraph 22

Paragraph 22 was adopted.

Section C.1 was adopted.

Organization of work of the session (*concluded*)*

[Agenda item 2]

74. Mr. PELLET said that the meetings being held at the present session to discuss reservations to treaties with individual human rights bodies were extremely interesting. It might be useful, however, to hold a general colloquium or symposium bringing together all the human rights bodies for a slightly more structured discussion, perhaps on the basis of reports. Such a meeting could be held during the Commission's session in 2004 or 2005; it would be particularly useful before the Commission took a decision on the preliminary conclusions on reservations to multilateral normative treaties, including human rights treaties, that it had adopted at its forty-ninth session.[1] What did members of the Commission think?

75. Mr. DUGARD said he strongly supported the proposal and thought it should be implemented in 2004, if possible. The meetings with human rights bodies had been encouraging. They should become an ongoing dialogue on an issue on which there was a great need for cooperation.

76. Mr. MANSFIELD said he also supported the proposal. The meetings with human rights bodies had allowed some progress to be made in harmonizing positions that had initially appeared very far apart. The organizational aspects of implementing the proposal, including venue and cost implications, should be investigated.

77. Ms. ESCARAMEIA said the meetings with human rights bodies were extremely useful but what was lacking was some sort of structure. Often the bodies had taken positions in individual cases but had not reflected very deeply on the overall question of reservations. She would like to see the dialogue with individual bodies continued, with particular emphasis on their reasoning about reservations to the treaties that concerned them. As for holding a symposium, it was certainly an interesting idea and she could support it, but not at the expense of a continuing dialogue with individual human rights bodies.

78. Mr. Sreenivasa RAO said exchanges were useful but should not amount to negotiation between the Commission and the human rights bodies.

79. Mr. BROWNLIE said the proposal was very attractive from the logical standpoint, but his intuitive reaction was that it was premature. It would be absolutely appropriate, but at a later stage in the dialogue with the human rights bodies. Bilateral, somewhat informal contacts were probably all they were prepared for at the moment. They were feeling their way forward, and the Commission should not be seen to be imposing a structure on the discussion or pressing for a resolution of the issue.

80. Mr. PELLET said the point was for everyone to feel the way forward together. He understood Mr. Sreenivasa Rao's concerns about not entering into negotiations, but it would be useful to seek a synthesis of positions about reservations to treaties, especially since he sincerely hoped that in 2005 the Commission would adopt a decision on the preliminary conclusions it had adopted at its forty-ninth session. He would not, however, press his proposal.

81. The CHAIR said there was no substantive opposition to Mr. Pellet's proposal but some questions had been raised about the logistical implications. Members of the Commission should continue to reflect on the idea.

The meeting rose at 6.05 p.m.

2786th MEETING

Tuesday, 5 August 2003, at 10 a.m.

Chair: Mr. Enrique CANDIOTI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Marri, Mr. Brownlie, Mr. Chee, Mr. Comissário Afonso, Mr. Dugard, Mr. Economides, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kateka, Mr. Kolodkin, Mr. Mansfield, Mr. Matheson, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Yamada.

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* Resumed from the 2780th meeting.

[1] See 2781st meeting, footnote 11.