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Summary record of the 2790th meeting

Topic:
Adoption of the report

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49. Mr. MELESCANU said that, in the absence of Mr. Kabatsi, he felt bound to convey to the Commission his colleague's strong view, expressed in the Planning Committee, that the paragraph performed a useful function. The Commission had, after all, adopted cost-saving measures, including the introduction of the shorter session.

50. The CHAIR said that, if he heard no objection, he would take it that the Commission wished to delete the paragraph.

Paragraph 12 was deleted.

Paragraph 13

51. Mr. BROWNLIE said that the text would read better if the words "the basis of" were inserted between "fairness on" and "which the United Nations".

Paragraph 13, as amended, was adopted.

Section A, as amended, was adopted.

B. Date and place of the fifty-sixth session

Paragraph 14

Paragraph 14 was adopted.

Section B was adopted.

C. Cooperation with other bodies

Paragraphs 15 to 18

Paragraphs 15 to 18 were adopted.

Paragraph 19

52. Mr. YAMADA said that a reference to the meeting on the topic of shared natural resources had appeared elsewhere. The last sentence could therefore be deleted.

53. The CHAIR said that, in view of the fact that the paragraph concerned cooperation with other bodies, both references should be retained. He added that the meeting with the experts from UNESCO and FAO had taken place not on 23 July, as was stated, but on 30 July.

54. Mr. PELLET expressed regret that the Commission's contacts with the human rights bodies were dealt with so cursorily. He would prefer to have them described as useful, interesting or stimulating.

55. Mr. MANSFIELD (Rapporteur) agreed that the effect was rather stark. He would like to see the inclusion of a warm tribute to the experts from UNESCO, who had made special efforts to meet the Commission.

56. The CHAIR suggested that a sentence should be introduced at the beginning of the paragraph, reading: "The following meetings, which were particularly valuable and useful, took place."

57. Mr. KATEKA (Chair of the Drafting Committee) said that the Commission would not be holding such

meetings if it did not consider them valuable. There was no need to state the obvious.

58. The CHAIR, after observing that to single out for praise meetings with one body might seem to cast an aspersions on the others, said that he nonetheless saw some merit in drawing attention to the expansion of the Commission's contact with other bodies.

59. Mr. PELLET concurred. The Commission's relations with human rights bodies had not always been particularly warm in the past. To include words of commendation would be both truthful and tactful.

60. The CHAIR suggested the insertion of a new paragraph 20 *bis* stating that the meetings with other bodies had been useful.

It was so decided.

Paragraph 19, as amended, was adopted.

Paragraph 20

Paragraph 20 was adopted.

Section C, as amended, was adopted.

The meeting rose at 1.10 p.m.

2790th MEETING

Friday, 8 August 2003, at 10.05 a.m.

Chair: Mr. Enrique CANDIOTI

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

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

1. The CHAIR invited the members of the Commission to continue their consideration of chapter XI of the draft

report of the Commission on the work of its fifty-fifth session. He recalled that the Commission had adopted sections A, B and C of that chapter at its previous meeting.

CHAPTER XI. Other decisions and conclusions of the Commission (concluded) (A/CN.4/L.643)

D. Representation at the fifty-eighth session of the General Assembly

Paragraph 21

Paragraph 21 was adopted.

Paragraph 22

2. The CHAIR said he took it that the Commission wished Mr. Gaja to attend the fifty-eighth session of the General Assembly.

It was so decided.

With this addition, paragraph 22 was adopted.

Section D was adopted.

E. International Law Seminar

Paragraphs 23 to 25

Paragraphs 23 to 25 were adopted.

Section E was adopted.

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

3. The CHAIR invited the members of the Commission to continue their consideration of chapter VIII, section B, of the draft report of the Commission.

CHAPTER VIII. Reservations to treaties (concluded) (A/CN.4/L.640 and Add.1-3)

B. Consideration of the topic at the present session (concluded) (ACN.4/L.640/Add.1-3)

Paragraphs 1 to 4 (A/CN.4/L.640/Add.3)

Paragraphs 1 to 4 were adopted.

Paragraph 5

4. Mr. GAJA said that the word “compared” in the first sentence of the English text should be replaced by the word “likened”.

Paragraph 5, as amended, was adopted.

Paragraph 6

5. Mr. GAJA proposed that the last sentence of the paragraph, which was almost incomprehensible, should be deleted.

6. The CHAIR said he took it that the Commission agreed to Mr. Gaja’s proposal.

It was so decided.

Paragraph 6, as amended, was adopted.

Paragraphs 7 to 14

Paragraphs 7 to 14 were adopted.

Paragraph 15

7. Ms. ESCARAMEIA proposed that the words “Secretary-General of the” should be inserted before “Council of Europe” in the first sentence of paragraph 15, and that the word “perhaps” should be deleted from the second sentence. In addition, as the penultimate sentence of the paragraph did little to enlighten the reader, she proposed that the following words should be added after the closing bracket: “as it was never possible to give a broader interpretation to a reservation made earlier, even if all parties agreed with it”.

8. The CHAIR said he took it that the Commission agreed to Ms. Escarameia’s proposals.

It was so decided.

Paragraph 15, as amended, was adopted.

Paragraphs 16 to 28

Paragraphs 16 to 28 were adopted.

Section B, as amended, was adopted.

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

CHAPTER II. Summary of the work of the Commission at its fifty-fifth session (A/CN.4/L.634)

9. Mr. PELLET said that chapter II in its current form left the reader no wiser. It would have been better to highlight the main problems the Commission had had to deal with rather than simply enumerate in a mechanical way the formal decisions it had taken. It would be a good idea in the future to rethink the structure of the chapter.

10. Mr. MANSFIELD (Rapporteur), agreeing with Mr. Pellet’s comment, said that the Commission should organize an early meeting of the Planning Group at its next session to remedy the problem.

Paragraphs 1 to 4

Paragraphs 1 to 4 were adopted.

Paragraph 5

11. Mr. GALICKI pointed out that, since the Commission had not referred draft articles on objections to reservations to the Drafting Committee, the words “and also with objections to reservations” should be deleted from the end of paragraph 5.

12. The CHAIR said he took it that the Commission agreed to Mr. Galicki's proposal.

It was so decided.

Paragraph 5, as amended, was adopted.

Paragraphs 6 to 11

Paragraphs 6 to 11 were adopted.

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

CHAPTER III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.635)

Paragraph 1

Paragraph 1 was adopted.

A. The responsibility of international organizations

Paragraphs 2 and 3

Paragraphs 2 and 3 were adopted.

Section A was adopted.

B. Diplomatic protection

Paragraphs 4 and 5

Paragraphs 4 and 5 were adopted.

Section B was adopted.

C. 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)

Paragraph 6

13. Ms. ESCARAMEIA proposed that the words "of State funding and" should be inserted before the words "of the steps that might or should be taken ..." in subparagraph (d). She also proposed the addition of a new subparagraph, (f), to read: "(f) The final form of the Commission's work."

14. The CHAIR said he took it that the Commission agreed to Ms. Escarameia's proposal.

It was so decided.

Paragraph 6, as amended, was adopted.

Section C, as amended, was adopted.

D. Unilateral acts

Paragraph 7

15. Mr. MATHESON proposed that, in the first sentence, the words "the broadening of the purpose or scope of the topic" should be replaced by the words "a redefinition of the scope of the topic". Moreover, States should be

told what the Commission meant by "unilateral acts *stricto sensu*", a term used in the second sentence. He therefore proposed that a footnote reference should be added after the word *sensu* and that the definition of the phrase as formulated within the Working Group should be given in the footnote. Finally, the words "unilateral acts" should be replaced by the words "these unilateral acts" in the last sentence.

16. The CHAIR said he took it that the Commission agreed to Mr. Matheson's proposal.

It was so decided.

Paragraph 7, as amended, was adopted.

Paragraph 8

Paragraph 8 was adopted.

Paragraph 9

17. Mr. PELLET proposed that the words "to consider the possibility of providing" should be replaced by the words "to provide" in the second sentence, as the Commission was actually once again requesting Governments to provide information.

18. The CHAIR said he took it that the Commission agreed to Mr. Pellet's proposal.

It was so decided.

Paragraph 9, as amended, was adopted.

Section D, as amended, was adopted.

E. Reservations to treaties

Paragraphs 10 to 12

Paragraphs 10 to 12 were adopted.

Paragraph 13

19. Mr. GAJA proposed that the words "would be happy to know" in the first sentence should be replaced by the words "would like to know".

20. The CHAIR said he took it that the Commission agreed to Mr. Gaja's proposal.

It was so decided.

Paragraph 13, as amended, was adopted.

Paragraph 14

Paragraph 14 was adopted.

21. Ms. ESCARAMEIA proposed that a new paragraph 14 *bis* should be adopted, to read: "Draft guideline 2.3.5 (Enlargement of the scope of a reservation) gave rise to

divergent positions. It would be of interest to the Commission to know whether Governments think it should be kept, deleted or amended.”

22. Mr. PELLET pointed out that such a proposal would be applicable only on second reading. In fact, the draft had been returned to the Drafting Committee on first reading, and account must be taken of that fact. As far as the actual text of the proposal was concerned, he objected to it strongly, as it offered no explanation to States and so did not allow them to reply.

23. Mr. MELESCANU suggested that, to facilitate the adoption of the new paragraph proposed by Ms. Escarameia, it could be pointed out that a vote had been taken and the Commission had decided to retain the draft guideline. As it stood, the text gave the impression that the Commission had no opinion on the matter, whereas it had in fact taken a decision.

24. Mr. Sreenivasa RAO reminded the members of the Commission that, as a rule, the report covered only the official discussions within the Commission.

25. Mr. ECONOMIDES said that he supported Ms. Escarameia's proposal, which he found comprehensive and objective. He also agreed with Mr. Sreenivasa Rao's comment.

26. Mr. GAJA said that the Commission did not need to ask Governments whether a particular proposal should be deleted or amended. That decision was for the Commission to take. However, it could ask for comments on the issue. The request should be drafted in such a way that Governments could understand it; it would therefore be useful to include in a footnote the draft text submitted to the Drafting Committee.

27. Mr. MELESCANU said that he supported Mr. Gaja's proposal, which struck him as a compromise.

28. The CHAIR proposed that Ms. Escarameia's proposal should be formulated in the following way: “Draft guideline 2.3.5 (Enlargement of the scope of a reservation) gave rise to divergent views. It was referred to the Drafting Committee. The views of Governments on this guideline would be particularly welcomed.” He also proposed that a footnote containing the text of the relevant draft should be added. If he heard no objections, he would take it that the Commission agreed to those proposals.

It was so decided.

The new paragraph 14 bis was adopted.

Section E, as amended, was adopted.

F. Shared natural resources

Paragraph 15

29. The CHAIR proposed that the text of subparagraph (b) should be replaced by the phrase “Main uses of specific groundwaters and State practice relating to their management” and the text of subparagraph (d) by the phrase “National legislation, in particular the legislation of federal States that governs groundwaters across its political subdivisions, together with information as to how such legislation is implemented”.

Paragraph 15, as amended, was adopted.

Section F, as amended, was adopted.

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

CHAPTER I. Organization of the session (A/CN.4/L.633)

Paragraphs 1 to 9

Paragraphs 1 to 9 were adopted.

Paragraph 10

30. Mr. PELLET said that the words *composés comme suit* should be deleted from the end of the sentence in the French text.

31. The CHAIR said that they had been left in by mistake, like the corresponding words in the Spanish version, *integrados por los miembros que a continuación se indican*, which should also be deleted.

Paragraph 10, as amended, was adopted.

Paragraphs 11 to 13

Paragraphs 11 to 13 were adopted.

Chapter I of the report was adopted.

The report of the Commission on the work of its fifty-fifth session, as a whole, as amended, was adopted.

CLOSURE OF THE SESSION

32. After the customary exchange of courtesies, the CHAIR declared the fifty-fifth session of the International Law Commission closed.

The meeting rose at 10.55 a.m.