

Document:-
A/CN.4/SR.2828

Summary record of the 2828th meeting

Topic:
Adoption of the report

Extract from the Yearbook of the International Law Commission:-
2004, vol. I

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35. Mr. ECONOMIDES suggested the addition of the phrase “at least with regard to the fields within their competence” at the end of the first sentence, since it went without saying that an international organization could acknowledge a wrongful act as its own only if it concerned a matter within its competence.

36. Mr. GAJA (Special Rapporteur) said that it might be better to amend the second sentence to read: “The question may arise of the competence of the international organization for making that acknowledgement and adoption, and of which organ or agent would be competent to do so.”

Paragraph (5), as amended, was adopted.

Section C, as amended, was adopted.

Chapter V of the draft report, as a whole, as amended, was adopted.

Chapter VI. Shared natural resources (A/CN.4/L.655 and Corr.1)

A. Introduction (A/CN.4/L.655)

Paragraphs 1 to 4

Paragraphs 1 to 4 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session (A/CN.4/L.655 and Corr.1)

Paragraphs 5 to 8

Paragraphs 5 to 8 were adopted.

1. INTRODUCTION BY THE SPECIAL RAPPORTEUR OF HIS SECOND REPORT

Paragraph 9

Paragraph 9 was adopted.

Paragraph 10

Paragraph 10 was adopted with a minor drafting amendment.

Paragraphs 11 and 12

Paragraphs 11 and 12 were adopted.

Paragraph 13

Paragraph 13, as amended by document A/CN.4/L.655/Corr.1, was adopted.

Paragraph 14

Paragraph 14 was adopted with a minor editorial amendment.

Paragraphs 15 to 17

Paragraphs 15 to 17 were adopted.

Paragraph 18

37. Mr. OPERTTI BADAN drew attention to the fact that, in the Spanish version of the document, the Guarani aquifer should always be spelled with initial capital letters.

38. Mr. PELLET said that the paragraph should make it clear to the ordinary reader that the Guarani aquifer System was common to Argentina, Brazil, Paraguay and Uruguay, perhaps by listing the four countries in parentheses.

39. Mr. ECONOMIDES asked whether the reference to “the two aquifer systems” in the last sentence should simply be a reference to “the two aquifers”.

40. Mr. MANSFIELD said that, in the first sentence, the word “should” should be inserted between “Commission” and “deal”; in the second sentence, the word “exemplified” should be changed to “explained”.

41. Mr. OPERTTI BADAN, referring to the question raised by Mr. Economides, said that the Guarani aquifer was not a system. The penultimate and last sentences should be amended accordingly.

42. Mr. GAJA said that, with reference to Mr. Pellet’s proposal regarding the Guarani aquifer, it would be wise to avoid the term “common to”. A more neutral term would be preferable.

43. Mr. OPERTTI BADAN suggested that it would suffice to insert the names of the four countries concerned in parentheses, after the words “Guarani aquifer”, as already suggested by Mr. Pellet.

Paragraph 18, as amended, was adopted.

Paragraphs 19 and 20

Paragraphs 19 and 20 were adopted.

Paragraph 21

Paragraph 21 was adopted with two minor drafting amendments proposed by the Special Rapporteur.

Paragraph 22

Paragraph 22 was adopted.

The meeting rose at 6.05 p.m.

2828th MEETING

Wednesday, 4 August 2004, at 10 a.m.

Chairperson: Mr. Teodor Viorel MELESCANU

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Mr. Economides, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr. Kolodkin, Mr. Mansfield, Mr. Matheson, Mr. Momtaz, Mr. Opertti Badan, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Yamada.

Fragmentation of international law: difficulties arising from the diversification and expansion of international law (A/CN.4/537, sect. G, A/CN.4/L.663/Rev.1)

[Agenda item 8]

REPORT OF THE STUDY GROUP

1. The CHAIRPERSON invited Mr. Mansfield to introduce the report of the Study Group on the fragmentation of international law (A/CN.4/L.663/Rev.1) on behalf of its Chairperson, Mr. Koskenniemi, who was unable to be present at the current meeting.

2. Mr. MANSFIELD said that the report of the Study Group on the fragmentation of international law summarized the Study Group's procedural and substantive debates during the eight meetings that it had held at the current session on the five studies carried out on the topic. The report was divided into two sections: section A, entitled "Introduction", and section B, divided into six subsections.

3. Subsection 1, entitled "General comments and the projected outcome of the Study Group's work" contained general information on the Study Group's current work, its future work and the final outcome of its discussions. The Study Group's intention, as stated in paragraph 7, was to prepare a substantive, collective document which would be submitted to the Commission in 2006 and would consist of two parts: a substantive study of the topic and a concise summary containing the proposed conclusions and, if appropriate, guidelines on how to deal with fragmentation.

4. Subsections 2 to 6 dealt with the Study Group's discussions on the five planned studies. Paragraphs 8 to 35 related to the study concerning the function and scope of the *lex specialis* rule and the question of "self-contained regimes", which had been prepared by the Chairperson, and paragraphs 36 to 63 referred to the four other studies.

5. Although the Study Group had made good progress, its work was still in the early stages. He therefore proposed that the Commission should simply take note of the Study Group's report, as it had done in 2004.

6. The CHAIRPERSON said he took it that the Commission adopted Mr. Mansfield's proposal.

It was so decided.

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

Chapter VI. Shared natural resources (concluded) (A/CN.4/L.655 and Corr.1)

7. The CHAIRPERSON invited the members to continue their consideration of chapter VI of the draft report of the Commission.

⁴ Reproduced in *Yearbook ... 2004*, vol. II (Part Two), chap. X, sect. C.

B. Consideration of the topic at the present session (concluded)

1. INTRODUCTION BY THE SPECIAL RAPPORTEUR OF HIS SECOND REPORT (concluded)

Paragraphs 23 to 30

Paragraphs 23 to 30 were adopted.

2. SUMMARY OF THE DEBATE

Paragraph 31

8. Mr. ECONOMIDES said that, in the light of the Commission's mandate, the words "the policy-making phase" at the end of the paragraph should be replaced by the words "a legal framework".

9. Mr. YAMADA (Special Rapporteur) said that he did not remember having expressed the opinion attributed to him in the third sentence. The beginning of that sentence should therefore be amended to read: "Several members agreed that further research...".

Paragraph 31, as amended, was adopted.

Paragraphs 32 to 39

Paragraphs 32 to 39 were adopted.

Paragraph 40

10. Mr. GAJA proposed that the words "of relevant laws and regulations" in the penultimate sentence should be deleted.

11. Mr. OPERTTI BADAN said that the MERCOSUR countries never used the word "system" in relation to the Guarani aquifer. That word should therefore be deleted.

Paragraph 40, as amended, was adopted.

Paragraph 41

Paragraph 41 was adopted.

Paragraph 42

12. Mr. MOMTAZ, supported by Mr. MANSFIELD, Mr. GALICKI and Mr. AL-BAHARNA, said that paragraph 42 referred to the discussion that had taken place on groundwaters and that, in the first sentence, the word "water" should be replaced by the word "groundwaters" and that the entire paragraph should be amended accordingly.

Paragraph 42, as amended, was adopted.

Paragraphs 43 and 44

Paragraphs 43 and 44 were adopted.

Paragraph 45

13. Mr. MOMTAZ said that, on the basis of paragraph 70 in particular, it would be more accurate to refer to "Scant State practice" than to "The lack of State practice" at the beginning of the second sentence.

Paragraph 45, as amended, was adopted.

Paragraph 46

14. Mr. ECONOMIDES said that, in the second sentence in the French text, the word “*certain*” should be replaced by the word “*des*”, which was more neutral.

Paragraph 46, as amended, was adopted.

Paragraphs 47 and 48

Paragraphs 47 and 48 were adopted.

Paragraph 49

15. Mr. GAJA, supported by Mr. OPERTTI BADAN, said that the word “UNIDROIT” in the third sentence gave the impression that that organization had prepared a model law on the topic, but that was not the case. It would therefore be better for the words “along the lines followed by UNIDROIT” to be deleted.

Paragraph 49, as amended, was adopted.

Paragraphs 50 and 51

Paragraphs 50 and 51 were adopted.

Paragraph 52

16. Mr. MOMTAZ said that he did not understand the meaning of paragraph 52, the first part of which bore no relation to the second.

17. Mr. GAJA, supported by Mr. OPERTTI BADAN, said that the second part could be deleted and paragraph 52 would thus end with the word “uses”.

18. Mr. PAMBOU-TCHIVOUNDA said that, in his opinion, paragraph 52 should be retained because it followed on logically from paragraph 51 and reflected a comment that had actually been made.

19. Mr. ECONOMIDES said that he agreed with Mr. Pambou-Tchivounda and proposed that the second part of the paragraph should be amended to read: “that the term ‘significant harm’ related to those groundwaters and should be included in the draft article”.

Paragraph 52, as amended, was adopted.

Paragraphs 53 to 68

Paragraphs 53 to 68 were adopted.

Paragraph 69

Paragraph 69 was adopted, subject to a minor drafting change in the English text.

3. SPECIAL RAPPORTEUR’S CONCLUDING REMARKS

Paragraph 70

20. Mr. MOMTAZ said that, in the first sentence, the words “the lack of State practice” should be replaced by the words “scant State practice”.

21. The CHAIRPERSON requested the members who used the Commission’s other working languages to inform the secretariat of their suggestions on the wording to be used.

Paragraph 70, as amended, was adopted.

Paragraph 71

22. Mr. OPERTTI BADAN proposed that, in the second sentence, the words “and standards” should be deleted and that only the word “guidance” should be retained.

Paragraph 71, as amended, was adopted.

Paragraphs 72 to 77

Paragraphs 72 to 77 were adopted.

Paragraph 78

23. Mr. OPERTTI BADAN said that he would like the words “aquifer system” to be replaced by the word “aquifer”.

Paragraph 78, as amended, was adopted.

Paragraphs 79 to 83

Paragraphs 79 to 83 were adopted.

Paragraph 84

24. Mr. OPERTTI BADAN said that the words “take into account” should be replaced by the word “consider”.

25. Mr. AL-BAHARNA proposed the following wording: “that he would take account, in his study, of the water rules”.

26. Mr. BROWNLIE suggested the following wording: “that he would take account, as appropriate ...”.

Paragraph 84, as amended by Mr. Brownlie, was adopted.

Section B, as amended, was adopted.

27. The CHAIRPERSON, noting that the Commission had completed its consideration of chapter VI of its draft report, invited the Special Rapporteur to take the floor.

28. Mr. YAMADA (Special Rapporteur) said that a few words should be added to the draft report of the Commission on the questionnaire which he had prepared in order to identify State practice, as indicated in paragraph 70, and requested the Commission’s authorization to transmit the questionnaire to Governments through the secretariat.

29. The CHAIRPERSON said that, if he heard no objection, he would take it that the Commission agreed to the request by the Special Rapporteur.

It was so decided.

Chapter VI of the draft report, as a whole, 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.656 and Add.1 to 3)

30. The CHAIRPERSON invited the members of the Commission to consider chapter VI, sections A and B, of the draft report of the Commission.

A. Introduction (A/CN.4/L.656)

Paragraphs 1 to 11

Paragraphs 1 to 11 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraphs 12 to 15

Paragraphs 12 to 15 were adopted.

Paragraph 17

Paragraph 17 was adopted.

31. The CHAIRPERSON invited the members to consider chapter VII, section C, of the draft report of the Commission, which contained the text of the draft principles adopted by the Commission on first reading and the commentaries thereto.

C. Text of the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities adopted by the Commission on first reading (A/CN.4/L.656/Add.1 to 3)

2. TEXT OF THE DRAFT PRINCIPLES WITH COMMENTARIES THERETO

Paragraph 1 (A/CN.4/L.656/Add.1)

Paragraph 1 was adopted.

General commentary

Paragraphs (1) to (9)

Paragraphs (1) to (9) were adopted.

Paragraph (10)

32. Mr. Sreenivasa RAO (Special Rapporteur) proposed that, at the end of the penultimate sentence, the words “as appropriate, to and monitor the same” should be replaced by the following: “to evaluate applications for authorization and determine appropriate monitoring arrangements to monitor the same”.

Paragraph (10), as amended, was adopted.

Paragraphs (11) and (12)

Paragraphs (11) and (12) were adopted.

Paragraph (13)

Paragraph (13) was adopted, subject to a minor drafting change in English.

Paragraph (14)

Paragraph (14) was adopted.

Commentary to the preamble

Paragraph (1)

33. Mr. KATEKA suggested that the last sentence should be deleted.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (4)

Paragraphs (2) to (4) were adopted.

Paragraph (5)

34. Mr. KOLODKIN said that the last part of the paragraph, beginning with the words “and the last”, left something to be desired because it repeated exactly what was stated in the preamble. He therefore suggested either that that phrase should be deleted, or that it should be indicated, as in paragraph (3), that the last preambular paragraph was self-explanatory, or that it should be explained that the Commission had expressed its wish to contribute to the further development of international law.

35. Mr. Sreenivasa RAO (Special Rapporteur), agreeing with the comment by Mr. Kolodkin, suggested the following wording: “The last preambular paragraph indicates the desire of the Commission to contribute to ongoing efforts for the further development of international law in this field.”

36. Mr. ECONOMIDES said that, in his opinion, paragraph (5) should be retained as it stood because it reproduced the text of the preamble, thus indicating that the preambular paragraphs were clear and self-explanatory.

37. Mr. PAMBOU-TCHIVOUNDA said that, in view of the fact that the Commission’s purpose was to ensure the progressive development of international law, the words “the desire to contribute further” were too weak. The word “*Desiring*” itself in the text of the last preambular paragraph was also not appropriate. If paragraph (5) was to be amended along the lines proposed by the Special Rapporteur by referring to the ongoing efforts being made with a view to the further development of international law, such efforts should also be referred to in the preamble.

38. Mr. CANDIOTI said that he agreed with Mr. Pambou-Tchivounda, but pointed out that, in the preamble, the General Assembly was speaking, not the Commission.

39. The CHAIRPERSON said that the comments on the text of the preamble could be taken into account on second reading. For the time being, he suggested that paragraph (5) should contain a sentence indicating that the preambular paragraphs in question and the text proposed by the Special Rapporteur spoke for themselves.

Paragraph (5), as amended, was adopted.

Commentary to principle 1 (Scope of application)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

Paragraph (3) was adopted, subject to the replacement of the word “could” by the word “would” in the English version.

Paragraphs (4) to (6)

Paragraphs (4) to (6) were adopted.

Paragraph (7)

40. Mr. Sreenivasa RAO (Special Rapporteur) said that the references in French would be added in the footnote at the end of the second sentence.

Paragraph (7) was adopted, subject to the addition of those references.

Paragraph (8)

Paragraph (8) was adopted.

Paragraph (9)

41. Mr. GAJA said that the words “it is assumed that duties of due diligence under draft articles on prevention have been fulfilled” implied that, when those duties had not been fulfilled, the draft articles would not apply, but that was not true. He therefore proposed that the paragraph should be amended to read: “The focus of the present principles is on damage caused, despite the fulfilment of the duty of reasonable diligence provided for in the draft articles on prevention. However, they are also relevant when these duties have not been fulfilled”.

42. Mr. Sreenivasa RAO (Special Rapporteur) said that he understood Mr. Gaja’s argument. If the duty in question was not fulfilled, the draft principles applied and the relevant provisions of the draft articles on responsibility of States for internationally wrongful acts² could also apply. He therefore proposed that he should hold discussions with Mr. Gaja on a new version of paragraph (9).

43. The CHAIRPERSON said he took it that the members of the Commission agreed with that proposal.

It was so decided.

Paragraphs (10) and (11)

Paragraphs (10) and (11) were adopted.

Paragraph (12)

44. Mr. KOLODKIN said that the wording “territory or other places under” in the third sentence should also be used in the last sentence.

45. Mr. Sreenivasa RAO (Special Rapporteur) said that he agreed with Mr. Kolodkin. He also indicated that the word “jurisdictions” should be replaced by the word “jurisdiction”.

Paragraph (12), as amended, was adopted.

Paragraphs (13) and (14)

Paragraphs (13) and (14) were adopted.

Commentary to principle 2 (Use of terms)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

46. Mr. Sreenivasa RAO (Special Rapporteur) said that the words “which is State property” should be replaced by the words “which may be State property”.

Paragraph (3), as amended, was adopted.

Paragraphs (4) to (9)

Paragraphs (4) to (9) were adopted.

Paragraph (10)

47. Mr. GAJA proposed that, in the second sentence of the English version, the word “aspects” should be replaced by the word “items”.

Paragraph (10), as amended in English, was adopted.

Paragraph (11)

48. Mr. Sreenivasa RAO (Special Rapporteur) proposed that, in the second sentence of the English version, the words “as they are” should be replaced by the words “as well as”.

49. Mr. MOMTAZ said that reference should also be made to the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.

Paragraph (11), as amended, was adopted.

Paragraph (12)

Paragraph (12) was adopted, subject to minor drafting changes in English.

Paragraphs (13) to (21)

Paragraphs (13) to (21) were adopted.

Paragraph (22)

50. Mr. Sreenivasa RAO (Special Rapporteur) said that the last sentence should be deleted.

Paragraph (22), as amended, was adopted.

Paragraphs (23) to (27)

¹ See 2792nd meeting, footnote 5.

Paragraphs (23) to (27) were adopted.

Paragraph (28)

51. Mr. Sreenivasa RAO (Special Rapporteur) said that, in the antepenultimate sentence, the word “particularly” should be deleted.

Paragraph (28), as amended, was adopted.

Paragraph (29)

Paragraph (29) was adopted.

Commentaries to principles 3 and 4 (A/CN.4/L.656/Add.2)

Commentary to principle 3 (Objective)

Paragraph (1)

52. Mr. Sreenivasa RAO (Special Rapporteur) said that, in subparagraph (b), the words “concerned or injured” should be deleted.

53. Mr. GAJA said that the last of the other objectives referred to in subparagraph (d) should also be deleted because that was the main objective of the draft principles, namely ensuring prompt and adequate compensation.

54. Mr. Sreenivasa RAO (Special Rapporteur) said that it might be better to change the order in which the objectives were listed. The main objective, which was in last position in subparagraph (d), should come first and the secondary objectives should follow.

55. The CHAIRPERSON suggested that the Special Rapporteur and Mr. Gaja should decide how paragraph (1) should be redrafted.

It was so decided.

Paragraph (2)

Paragraph (2) was adopted.

Paragraph (3)

56. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the beginning of the paragraph should be amended to read: “A formal definition of ‘victim’ was not considered necessary, but, for the purposes of the present principles, this term means natural and legal persons, including States as custodians of public property”.

57. Mr. MANSFIELD said that, in that case, the words “This definition” at the beginning of the second sentence should be replaced by the words “The meaning of this term”.

58. Mr. Sreenivasa RAO (Special Rapporteur) said that, in the footnote at the end of the second sentence, the words “In respect of international criminal law” should be replaced by the words “In respect of the definition of victim in international criminal law”.

Paragraph (3), as amended, was adopted.

Paragraph (4)

Paragraph (4) was adopted.

Paragraphs (5) to (9)

59. Mr. GAJA said that paragraph (5) and paragraphs (6) to (9) dealt primarily with breaches of obligations, but that was not really the subject of the study. The existence of those obligations could be recalled, but without going into details. His second objection related to the quotation from Birnie and Boyle, whose position was, of course, respectable, but contrary to that of the Commission. He therefore proposed that the quotation should be included in a footnote.

60. Mr. Sreenivasa RAO (Special Rapporteur) said that he realized that paragraphs (5) to (9) dealt with matters which were not the focus of the topic and therefore proposed that they should be deleted.

61. The CHAIRPERSON said that, if he heard no objection, he would take it that the Commission agreed to delete paragraphs (5) to (9).

It was so decided.

Paragraphs (10) and (11)

Paragraphs (10) and (11) were adopted.

Paragraph (12)

62. Mr. Sreenivasa RAO (Special Rapporteur) proposed that a new footnote symbol should be added at the end of the first sentence that would refer to a footnote containing a quotation in French, the text of which would be communicated to the secretariat.

Paragraph (12) was adopted, subject to the addition of that new footnote.

Paragraph (13)

Paragraph (13) was adopted.

Paragraph (14)

63. Mr. Sreenivasa RAO (Special Rapporteur), referring to the footnote at the end of the paragraph, said that the words “Colombo (Sri Lanka)” should be added before the word “1997” inside the parentheses at the end of the first sentence. His name should be added after the words “first report on prevention” and the words “for a reiteration of these principles” should be added at the end of the last sentence, before the address of the Supreme Court Web site.

Paragraph (14), as amended, was adopted.

Paragraphs (15) to (18)

Paragraphs (15) to (18) were adopted.

Paragraph (19)

64. Mr. Sreenivasa RAO (Special Rapporteur) said that the word “measures” at the end of the paragraph should be deleted.

Paragraph (19), as amended in English, was adopted.

Paragraph (20)

65. Mr. GAJA said that, in the footnote at the end of the second sentence, the reference to the *Antonio Gramsci* incident was rather obscure. A primary source should, moreover, be cited in referring to the *Amoco Cadiz* case.

Paragraph (20) was adopted, subject to that amendment.

Paragraphs (21) and (22)

Paragraphs (21) and (22) were adopted.

Commentary to principle 4 (Prompt and adequate compensation)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

66. Mr. Sreenivasa RAO (Special Rapporteur) said that, in the last sentence, the word “obligation” should be replaced by the word “requirement”.

Paragraph (3), as amended, was adopted.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were adopted.

Paragraph (6)

67. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the second sentence should be amended to read: “As for the manner of ensuring financial security for prompt and adequate compensation, the last three paragraphs leave the State of origin free”. He also proposed that the word “while” at the beginning of the last sentence should be deleted.

Paragraph (6), as amended, was adopted.

Paragraph (7)

Paragraph (7) was adopted, subject to a minor drafting change in English.

Paragraph (8)

68. Mr. GAJA said that paragraph (8) should be redrafted on the basis of the wording to be adopted for paragraph (9) of the commentary to principle 1.

69. The CHAIRPERSON proposed that paragraph (8) should be left pending.

It was so decided.

Paragraphs (9) to (12)

Paragraphs (9) to (12) were adopted.

Paragraph (13)

70. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the word “widely” should be added after the word “yet” in the last sentence.

Paragraph (13), as amended, was adopted.

Paragraph (14)

71. Mr. Sreenivasa RAO (Special Rapporteur) proposed that, in the third sentence, the words “is not required” should be replaced by the words “should not be required”. He also proposed that the penultimate sentence should be deleted.

Paragraph (14), as amended, was adopted.

Paragraph (15)

Paragraph (15) was adopted.

Paragraph (16)

72. Mr. Sreenivasa RAO (Special Rapporteur) proposed that, in the third sentence, the words “States may consider at the opportune time” should be replaced by the words “States might, whenever necessary, consider”.

Paragraph (16), as amended, was adopted.

Paragraphs (17) to (19)

Paragraphs (17) to (19) were adopted.

Paragraph (20)

73. Mr. Sreenivasa RAO (Special Rapporteur) proposed that, at the beginning of the second sentence, the words “Existing international instruments” should be replaced by the words “Some existing international instruments”.

Paragraph (20), as amended, was adopted.

Paragraphs (21) to (23)

Paragraphs (21) to (23) were adopted.

Paragraph (24)

74. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the words “In those cases where fault responsibility is preferred, it may be noted” should be added at the beginning of the third sentence.

Paragraph (24), as amended, was adopted.

Paragraphs (25) to (31)

Paragraphs (25) to (31) were adopted.

Paragraph (32)

75. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the footnote symbol should be moved from the last sentence to the penultimate sentence.

Paragraph (32), as amended, was adopted.

Paragraphs (33) to (36)

Paragraphs (33) to (36) were adopted.

Commentaries to principles 5 to 8 (A/CN.4/L.656/Add.3)

Commentary to principle 5 (Response measures)

Paragraph (1)

76. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the sixth sentence should be replaced by the following: "Such a role stems from the general obligation of States to ensure that activities within their jurisdiction and control do not give rise to transboundary harm".

Paragraph (1), as amended, was adopted.

Paragraph (2)

77. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the words "into action" in the first sentence of the English version should be deleted.

Paragraph (2), as amended in English, was adopted.

Paragraph (3)

78. Mr. Sreenivasa RAO (Special Rapporteur) said that the word "envisaged" should be placed between the words "The" and "role".

Paragraph (3), as amended in English, was adopted.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were adopted.

Paragraph (6)

79. Mr. Sreenivasa RAO (Special Rapporteur) said that, in the second sentence of the English version, the word "operationalize" should be replaced by the words "put into operation".

Paragraph (6), as amended in English, was adopted.

Commentary to principle 6 (International and domestic remedies)

Paragraph (1)

80. Mr. Sreenivasa RAO (Special Rapporteur) proposed that, in the second sentence, the word "obligation" should be replaced by the word "requirement" and that, in the third sentence, the word "obligations" should be replaced by the word "requirements".

81. Mr. GAJA said that, in order to bring paragraph (1) into line with the paragraphs that followed, the words "each State" should be replaced by the words "State of origin".

Paragraph (1), as amended, was adopted.

Paragraph (2)

82. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the third sentence of the footnote at the end of the third sentence should be amended to read: "The USSR paid C\$ 3 million by way of compensation to Canada following the crash of Cosmos 954 in January 1978, see P. Sands, *op. cit.*, p. 887".

Paragraph (2), as amended, was adopted.

The meeting rose at 1.05 p.m.

2829th MEETING

Thursday, 5 August 2004, at 10 a.m.

Chairperson: Mr. Teodor Viorel MELESCANU

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Mr. Economides, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr. Kolodkin, Mr. Mansfield, Mr. Matheson, Mr. Momtaz, Mr. Opertti Badan, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Yamada.

Unilateral acts of States (*concluded*)* (A/CN.4/537, sect. D, A/CN.4/542¹)

[Agenda item 5]

REPORT OF THE WORKING GROUP

1. Mr. PELLET (Chairperson of the Working Group) recalled that, following the discussion of the seventh report of the Special Rapporteur on the topic (A/CN.4/542), the Commission had decided to set up an open-ended Working Group, which had met on a number of occasions. Its task had essentially been to consider how to assist the Special Rapporteur in pursuing his study of State practice. It had drawn up a grid to be used for analysing unilateral acts on a common basis and had put together a sample of cases that might constitute unilateral acts, without prejudging their legal nature.

2. After an exchange of views that had been as full as possible, given the limited time frame available, the Working Group had adopted the grid, which proposed a number of criteria on the basis of which in-depth, systematic studies should be made. The criteria were: date; author or organ; competence of author/organ; form; content; context and circumstances; aim; addressees; reactions of addressees; reactions of third parties; basis; implementation; modification; termination/revocation; legal scope; decision of a judge or arbitrator; comments; and literature. Members of the Working Group and others had been asked, and had agreed, to undertake the studies, which were to be sent to the Special Rapporteur by 30 November 2004 to enable

* Resumed from the 2818th meeting.

¹ Reproduced in *Yearbook ... 2004*, vol. II (Part One).