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Summary record of the 2913th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
2006, vol. I

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Paragraphs 17 and 18

Paragraphs 17 and 18 were adopted.

3. SPECIAL RAPPORTEUR'S CONCLUDING REMARKS

Paragraph 19

48. Mr. MOMTAZ said that the word "parallel" in the last sentence should be deleted: the jurisdiction in question could be either exclusive or residual.

Paragraph 19, as amended, was adopted.

Paragraph 20

49. Mr. GALICKI (Special Rapporteur) said that the paragraph did not faithfully reflect his conclusions. The penultimate sentence should end after the words "human rights law" and a new sentence should be added before the last sentence, to read: "Furthermore, he agreed with the suggestion that the focus of the whole exercise should be on the elaboration of secondary rules". The last sentence would remain as it stood.

Paragraph 20, as amended, was adopted.

Paragraph 21

Paragraph 21 was adopted.

Section B, as amended, was adopted.

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

CHAPTER II. Summary of the work of the Commission at its fifty-eighth session (continued) (A/CN.4/L.690)

Paragraph 9 (concluded)

50. The CHAIRPERSON recalled that paragraph 9 of chapter II of the draft report of the Commission (A/CN.4/L.690) had been left in abeyance to allow Mr. Mansfield to draft a text for it. That text read:

"As regards the topic "Fragmentation of international law: difficulties arising from the diversification and expansion of international law", the Commission considered the report of the Study Group (A/CN.4/L.682 and Corr.1 and Add.1) and took note of its 42 conclusions (chap. XII). The report and its conclusions were prepared on the basis of an analytical study finalized by the Chairman of the Study Group which summarized and analysed the phenomenon of fragmentation taking account of studies prepared by various members of the Study Group, as well as discussion within the Study Group itself. The Commission requested that the analytical study should be made available on its website and published in its *Yearbook*.

51. Mr. KOSKENNIEMI (Chairperson of the Study Group), supported by Mr. KATEKA, Mr. CANDIOTI, Ms. ESCARAMEIA and Mr. MANSFIELD, said that, in the text just read out, he would like the Commission to do more than "take note" of the 42 conclusions of the Study Group if it wanted to make it clear that it attached to the

fragmentation of international law the importance that every member had attributed to it. He therefore suggested that the words "and endorsed" should be added in the first sentence after "took note of".

52. Mr. PELLET said that the Commission could not "endorse" conclusions which it had not considered in detail and to which members had not been able to make any amendments in plenary.

53. Following a discussion in which Mr. CHEE, Mr. BROWNLIE, Mr. Sreenivasa RAO, Mr. GAJA and Mr. MANSFIELD took part, Mr. VALENCIA-OSPINA suggested that the words "which it commends to the attention of the General Assembly" should be inserted in the first sentence after "conclusions".

It was so decided.

Paragraph 9, as amended, was adopted.

The meeting rose at 12.25 p.m.

2913th MEETING

Friday, 11 August 2006, at 10 a.m.

Chairperson: Mr. Guillaume PAMBOU-TCHIVOUNDA

Present: Mr. Addo, Mr. Brownlie, Mr. Candiotti, Mr. Chee, Mr. Comissário Afonso, Mr. Dugard, Mr. Economides, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Koskenniemi, Mr. Mansfield, Mr. Melescanu, Mr. Momtaz, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Valencia-Ospina, Ms. Xue.

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

CHAPTER VIII. Reservations to treaties (concluded) (A/CN.4/L.696 and Corr.1 and Add.1 and Corr.1 and Add.2-3)

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

1. The CHAIRPERSON proposed that the following paragraph should be inserted in section B of chapter VIII: "The Commission had before it the eleventh report of the Special Rapporteur on the subject of reservations to treaties (A/CN.4/574). The Commission decided to consider the report at its next session in 2007."

The new paragraph was adopted.

Section B, as amended, was adopted.

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

CHAPTER IX. Unilateral acts of States (A/CN.4/L.697, Add.1 and Corr.1, Add.2; A/CN.4/L.703)

2. The CHAIRPERSON drew attention to section A of the chapter IX, contained in document A/CN.4/L.697.

A. Introduction

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

Paragraph 3

3. Mr. PELLET said that, in keeping with past practice, it would be preferable for the reference to the Working Group in the first line to say that it was open-ended.

Paragraph 3, as amended was adopted.

Paragraphs 4 to 7

Paragraphs 4 to 7 were adopted.

Section A, as amended, was adopted.

4. The CHAIRPERSON drew attention to the portion of chapter IX contained in documents A/CN.4/L.697/Add.1 and Corr.1.

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

Paragraph 8

Paragraph 8 was adopted.

Paragraphs 9 to 12

5. The CHAIRPERSON noted that, in accordance with Corrigendum 1, the title, "1. Introduction by the Special Rapporteur of his ninth report" was deleted and paragraphs 9 to 12 were replaced by a single paragraph.

The text of A/CN.4/697/Add.1/Corr.1 was adopted, replacing paragraphs 9 to 12.

Paragraph 13

Paragraph 13 was adopted.

The portion of chapter IX contained in documents A/CN.4/L.697/Add.1 and Corr.1, as amended, was adopted.

6. The CHAIRPERSON drew attention to the portion of chapter IX contained in document A/CN.4/L.697/Add.2.

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

Paragraph 1

Paragraph 1 was adopted.

Paragraphs 2 to 5

7. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) pointed out that, of the paragraphs contained in document A/CN.4/L.697/Add.2, only paragraphs 1 and 5 belonged in section B. Paragraphs 2 to 4, which reproduced paragraphs 2 to 4 of the report of the Working Group (A/CN.4/L.703), belonged in section C.

8. Mr. PELLET said that it would then be necessary for the phrase "In the light of these comments, the Commission therefore adopts" at the beginning of the current paragraph 5 to be replaced by "Following this consideration, the Commission adopts", since the paragraph would follow directly on paragraph 1 without the intervening comments.

9. Mr. MOMTAZ said that it would be preferable to reverse the order of the words "difficulties" and "value" in paragraph 2.

10. Mr. PELLET pointed out that the text of paragraphs 2 to 4 had already been adopted when the Commission had adopted the report of the Working Group (A/CN.4/L.703) at its 2906th meeting and it was not advisable to reopen discussion on them.

11. Mr. BROWNLIE said that the reference to "behaviour" in the English version of paragraph 3 was an unusual locution which should be corrected.

12. The CHAIRPERSON said that the Secretariat would make the necessary corrections.

C. Text of the guiding principles applicable to unilateral declarations of States capable of creating legal obligations adopted by the Commission

1. TEXT OF THE GUIDING PRINCIPLES

13. The CHAIRPERSON noted that the content of paragraph 6 had already been adopted.

2. TEXT OF THE GUIDING PRINCIPLES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-EIGHTH SESSION

Paragraph 7

14. Mr. GAJA pointed out that the numbering of the footnotes in the English and French versions were inconsistent. He supposed that the term "commentaries" had been used to upgrade the status of the document. He thought that they were more in the nature of explanatory notes.

15. Ms. ESCARAMEIA said that, while Mr. Gaja's point was well taken, and although they were in the nature of footnotes and had not taken debate into account, she still preferred the term "commentaries", which had been decided in the Working Group. There had even been instances in which the Commission had agreed on a principle with the proviso that certain references would be made in the commentary. If the commentaries were degraded to explanatory notes, it would diminish their importance.

16. Mr. GAJA said that it would be confusing to the reader to speak of commentaries in the current case. They were very short and did not explain the use of terms.

17. Mr. PELLET said that he had no strong preference but was inclined to agree with Mr. Gaja. The guiding principles were a new exercise for the Commission, and the more a distinction was made with the usual exercise, the better. There was nothing pejorative about the term "explanatory notes".

18. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) said that Mr. Gaja's point was well taken, but that Ms. Escarameia was right to stress that there had been agreement on using the term "commentaries". One solution might be to insert a footnote in paragraph 7 explaining that, pursuant to a decision by the Working Group, they were not commentaries in the strict sense, but explanatory notes, and they should not be understood in the way the term was usually employed in the Commission.

19. Mr. PELLET proposed that a footnote be placed at the end of the paragraph, which would read: “This commentary comprises notes based exclusively on the jurisprudence of the International Court of Justice and its case law, which were considered comprehensively in the Special Rapporteur’s eighth report”.³⁹⁰

20. The CHAIRPERSON took it that the Commission wished to insert the footnotes proposed by the Special Rapporteur and Mr. Pellet.

It was so decided.

The chapeau of paragraph 7, as amended was adopted.

Commentary to draft guiding principle 1

Paragraph (1)

21. Mr. ECONOMIDES noted that there was no commentary on the preamble and wondered whether that had been a deliberate decision. With regard to paragraph (1), a sentence should be inserted at the end that would read: “Consequently, such intention must be clear and unambiguous in every sense.”

22. Mr. PELLET disagreed with the proposal by Mr. Economides. The Commission had just agreed that the commentaries were somewhat different than usual, and the reason was that those explanatory notes were based solely on the case law of the ICJ and the studies of practical cases summarized in the Special Rapporteur’s eighth report. He cautioned against going any further and making actual commentaries. He was also opposed because what Mr. Economides had just said was expressly set out later in guiding principle 7.

23. Mr. ECONOMIDES withdrew his proposal.

Paragraph (1) was adopted.

Paragraph (2)

Paragraph (2) was adopted.

The commentary to draft guiding principle 1 was adopted.

Commentary to draft guiding principle 2

Paragraph (1)

Paragraph (1) was adopted.

The commentary to draft guiding principle 2 was adopted.

Commentary to draft guiding principle 3

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to draft guiding principle 3 was adopted.

Commentary to draft guiding principle 4

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

24. Mr. GAJA said that in the beginning of the second sentence the reference to “the two cases” gave the impression that there were only two such cases, whereas in reality those were merely the only ones that had been cited. He therefore proposed changing the wording to read “in the two cases which were examined”.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Paragraph (3) was adopted.

The commentary to draft guiding principle 4, as amended, was adopted.

Commentary to draft guiding principle 5

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to draft guiding principle 5 was adopted.

Commentary to draft guiding principle 6

Paragraph (1)

25. Mr. GAJA said that the word “thus” in the first line should be deleted and the words “have the other State as their sole addressee” should read “have another State as their sole addressee”.

Paragraph (1), as amended, was adopted.

Paragraph (2)

26. Ms. ESCARAMEIA suggested replacing the phrase at the end of the paragraph which read “and to the Palestine Liberation Organization (PLO)” by “and to another entity, the Palestine Liberation Organization (PLO)”, because there had been confusion about what other entities were concerned. In the third sentence, “they” should be replaced by “the latter” to make it clear that the reference was only to the French declarations.

27. Mr. BROWNLIE said that other States had intervened in the *Nuclear Tests* case. He therefore suggested that, in the penultimate sentence, the phrase “and certain intervening States” should be inserted after the words “New Zealand”. Fiji had been one and there might have been others.

28. Mr. PELLET suggested that the State or States concerned should be listed in a footnote.

Paragraph (2), as amended, was adopted.

The commentary to draft guiding principle 6, as amended, was adopted.

Commentary to draft guiding principle 7

Paragraph (1)

Paragraph (1) was adopted.

³⁹⁰ *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/557.

Paragraph (2)

29. Ms. ESCARAMEIA said that the language of the paragraph, particularly in the English version, was too restrictive. She proposed that the opening words, “To determine” be replaced by the words “In case of doubt concerning” and the word “must” by the word “should” in the last sentence.

30. Mr. PELLET said that the quotation from the judgment of the ICJ in the *Nuclear Tests* case showed that a unilateral declaration must be interpreted in a restrictive manner. It seemed strange to ignore the Court’s judgment in one instance when the whole commentary was based on such judgments.

31. Ms. ESCARAMEIA recalled that the question had been discussed in the Working Group. The scope of a unilateral declaration was not always clear-cut and should not always be interpreted in a restrictive manner. The draft principle itself used the phrase “in the case of doubt”.

32. Mr. PELLET said that he endorsed the proposed amendment to the beginning of the sentence, but it was important to retain the word “must”.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Paragraph (3) was adopted.

The commentary to draft guiding principle 7, as amended, was adopted.

Commentary to draft guiding principle 8

The commentary to draft guiding principle 8, was adopted.

Commentary to draft guiding principle 9

Paragraph (1)

33. Mr. ECONOMIDES said that the Commission had had little opportunity to comment on the provision in depth, despite its importance. In his view, two explanatory notes should be added. First, it should be made clear that the provisions of the first sentence of the guiding principle applied only to unilateral acts based merely on the will of the State making a unilateral declaration. They did not apply in cases where the State acted unilaterally as empowered by international law, treaty law or customary law, or in accordance with the decision of an international organization. For example, a State might extend its territorial waters in accordance with international law. That was a unilateral act, but a legal one, and other States were bound to accept it whether they wished to or not.

34. Mr. PELLET said that the footnote whose reference was placed after “unequivocally accept these obligations” in the commentary to draft guiding principle 8, which also referred the reader to the introductory footnote whose reference was placed after “international law” in the second paragraph of the introduction (A/CN.4/L.697/Add.2), covered the issue raised by Mr. Economides.

35. Mr. ECONOMIDES said that he would have preferred stronger language in both the commentary and the footnote, but at least the substance was there. With reference to the second sentence of the draft guiding principle, he said that it should be made clear that acceptance meant acceptance of the unilateral act as such and did not constitute a reply establishing a treaty relationship. He suggested that an explanatory note should be added along the following lines: “The acceptance referred to in the second sentence of guiding principle 9 means the acceptance of a unilateral act and does not constitute the outcome of the treaty process”.

36. Ms. ESCARAMEIA said that the first sentence of the paragraph was not strictly accurate: under *jus cogens*, obligations could be imposed on a State without its consent. She therefore proposed that the last part of the sentence should be reformulated, to read: “cannot be imposed by a State upon another State without its consent”. That would accord more closely with the draft guiding principle itself.

37. Mr. PELLET said that he fully supported Ms. Escarameia’s proposed amendment. As for that of Mr. Economides, he considered it too bold. He would propose a less radical solution to address Mr. Economides’ concerns: at the end of the last sentence of the paragraph the words “these obligations” should be replaced by “the obligations resulting from that act”, referring back to “unilateral act”. In response to concerns raised at an earlier meeting by Mr. Melescanu and Mr. Kabatsi, who had pointed out that, legally, States were bound not by the original unilateral declaration but by their acceptance of it, he proposed that the following sentence should be added at the end of the paragraph: “In these circumstances, an addressee State is bound by its own declaration”.

38. Mr. GAJA said that the final word of Mr. Pellet’s proposal, “declaration”, should be replaced by “acceptance” since the acceptance might not necessarily take the form of a declaration.

39. Mr. RODRÍGUEZ CEDEÑO (Special Rapporteur) said that he fully supported the amendments proposed by Mr. Gaja, Ms. Escarameia and Mr. Pellet.

Paragraph (1), as amended, was adopted.

Paragraph (2)

40. Mr. MOMTAZ said that the date of the 28 September 1945 Truman Proclamation³⁹¹ should be given at the beginning of the paragraph, not halfway through. Secondly, he proposed that, in the third sentence, the words “the declaration was taken up” should be replaced by the words “the content of the proclamation was taken up”.

41. Mr. Sreenivasa RAO said that the draft guiding principle was self-explanatory. The reference to the Truman Proclamation, however, was not a good illustration of the principle, yet that was surely the whole point of the commentary. He would not ask for it to be deleted but wished his view to go on record.

³⁹¹ *United States Statutes at Large, 1945*, vol. 59, part 2, p. 884, Proclamation No. 2667.

Paragraph (2), as amended, was adopted.

The commentary to draft guiding principle 9, as a whole, as amended, was adopted.

Commentary to draft guiding principle 10

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

42. Mr. GAJA said that the guiding principle related to arbitrary revocation, but, in a case in which the declaration itself stipulated the circumstances in which its author might terminate it, the revocation was not necessarily arbitrary. He therefore considered that either the beginning of the paragraph should be deleted or the following phrase should be added after the words “terminate it”: “if those circumstances do not exist”.

43. Mr. ECONOMIDES said that such an amendment might complicate the issue.

44. Mr. GAJA said that it might be simpler to delete the mention altogether.

45. Mr. PELLET said that, although Mr. Gaja was right in saying that, in the case outlined in paragraph (3), the revocation was not strictly arbitrary, the draft guiding principle was attempting to illustrate the three categories of conditions for assessing whether a revocation was arbitrary. He therefore suggested that Mr. Gaja’s proposed amendment should appear as a footnote.

46. Ms. ESCARAMEIA said that the final sentence in the English text should be aligned with the French text by replacing the word “radical” by the word “fundamental” and the phrase “in the direction and within the strict limits” by the phrase “within the meaning and the strict limits”.

Paragraph (3), as amended, was adopted.

The commentary to draft guiding principle 10, as amended, was adopted.

The commentaries to the draft guiding principles, as a whole, as amended, were adopted.

47. Mr. CANDIOTI said that the Commission, having adopted the guiding principles relating to unilateral acts, should recommend that the General Assembly inform States of that fact, by way of a follow-up to the Commission’s completion of the mandate it had been given for that topic.

48. Mr. PELLET endorsed the proposal of Mr. Candiotti and proposed that the Commission adopt the same formula as that which it had used for the topic of the fragmentation of international law.

49. The CHAIRPERSON suggested that account should be taken of Mr. Candiotti’s proposal in paragraph 5 of document A/CN.4/L.697/Add.2.

It was so decided.

The portion of chapter IX contained in document A/CN.4/L.697/Add.2, as amended, was adopted.

Tribute to the Special Rapporteur

50. The CHAIRPERSON took it that the Commission wished to include the following text in Chapter IX of the report before the section presenting the draft guiding principles and the commentary thereto:

“At its 2913th meeting, on 11 August 2006, the Commission, after adopting the text of the guiding principles, adopted the following resolution by acclamation:

‘The International Law Commission,

‘Having adopted the guiding principles applicable to unilateral declarations of States capable of creating legal obligations and the commentaries thereto,

‘Expresses its deep appreciation and warm congratulations to the Special Rapporteur, Mr. Victor Rodríguez Cedeño, for the outstanding contribution he has made, through his devoted work and tireless efforts, to the preparation of the guiding principles applicable to unilateral declarations of States capable of creating legal obligations and for the results he has achieved in the elaboration of the said principles.’

“The Commission also expressed its deep appreciation to the Working Group on unilateral acts of States, chaired by Mr. Alain Pellet, for its tireless efforts and contribution to the work on this subject.”

The tribute to the Special Rapporteur was adopted by acclamation.

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

CHAPTER XIII. Other decisions and conclusions of the Commission (A/CN.4/L.701)

51. The CHAIRPERSON invited the Commission to commence its consideration of chapter XIII of the report and drew attention to the portion of the chapter contained in document A/CN.4/L.701.

A. Expulsion of aliens (A/CN.4/L.701)

Paragraph 1

Paragraph 1 was adopted.

B. Programme, procedures and working methods of the Commission and its documentation

Paragraphs 2 to 4

Paragraphs 2 to 4 were adopted.

1. LONG-TERM PROGRAMME OF WORK

Paragraphs 5 to 10

Paragraphs 5 to 10 were adopted.

2. DOCUMENTATION AND PUBLICATIONS

Paragraphs 11 to 16

Paragraphs 11 to 16 were adopted.

3. MEETING WITH UNITED NATIONS HUMAN RIGHTS EXPERTS

Paragraph 17

Paragraph 17 was adopted.

C. Date and place of the fifty-ninth session of the Commission

Paragraph 18

Paragraph 18 was adopted.

D. Cooperation with other bodies

Paragraphs 19 and 20

Paragraphs 19 and 20 were adopted.

Paragraph 21

52. Mr. GAJA said that the office held by Mr. Jean-Paul Hubert, Vice-President of the Inter-American Juridical Committee, should be specified.

53. The CHAIRPERSON suggested that the following sentence should be inserted in paragraph 21: "The Commission decided to convey its congratulations to the Committee on the occasion of its one hundredth anniversary and to be represented at the proceedings to commemorate that anniversary by Mr. João Baena Soares".

54. He took it that the Commission wished to include that sentence in paragraph 21.

It was so decided.

Paragraph 21, as amended, was adopted.

Paragraph 22

55. Mr. GAJA said that the office held by Mr. Guy De Vel, Director-General of Legal Affairs, Council of Europe, should be specified.

56. Mr. PELLET said that the paragraph should also mention the name of Mr. Rafael Benítez, who had likewise addressed the Commission.

Paragraph 22, as amended, was adopted.

Paragraph 23

57. Mr. GAJA proposed the deletion of paragraph 23.

Paragraph 23 was deleted.

E. Representation at the sixty-first session of the General Assembly

Paragraph 24

58. Mr. PELLET proposed the addition of a second sentence stating "The Commission regrets that due to budgetary constraints it was not possible for a Special Rapporteur to attend the sixty-first session of the General Assembly".

Paragraph 24, as amended, was adopted.

F. International Law Seminar

Paragraphs 25 to 39

Paragraphs 25 to 39 were adopted.

B. Programme procedures and working methods of the Commission and its documentation

HONORARIA

59. Mr. MANSFIELD reminded members that, after the date on which the members of the current Commission had been appointed, the General Assembly had adopted resolution 56/272 of 27 March 2002, which had reduced the honoraria payable to them and to members of certain other bodies. In that and subsequent years, the Commission had drawn attention, in its report, to that resolution and had noted that this decision of the General Assembly had been taken in direct contradiction to the conclusions and recommendations contained in the report of the Secretary-General on a comprehensive study of the question of honorariums payable to members of organs and subsidiary organs of the United Nations,³⁹² which had indicated that the level of the honoraria had not been reviewed since 1981. The Commission had likewise noted that the decision by the General Assembly had been taken without consultation with the Commission, and that in the latter's view this decision was not consistent in procedure or substance with either the principles of fairness on which the United Nations conducted its affairs, or with the spirit of service with which members of the Commission contributed their time and approached their work. The Commission had also stressed in those reports that this particular resolution especially affected Special Rapporteurs, in particular those from the developing countries, as it compromised support for their research work. It was his view that, at the end of the quinquennium, the Commission should once again draw the attention of the General Assembly to the impact of its decision on Special Rapporteurs, especially those from developing countries. He therefore proposed the insertion of the following paragraph:

"The Commission reiterated once more its views concerning the question of honoraria, resulting from the adoption by the General Assembly of its resolution 56/272 of 27 March 2002, which were expressed in its previous reports. The Commission emphasized again that the above resolution especially affects the Special Rapporteurs, in particular those from developing countries, as it compromises support for their research work. The Commission urges the General Assembly to reconsider this matter, with a view to restoring, at this stage, the honoraria for Special Rapporteurs."

³⁹² A/53/643.

60. The CHAIRPERSON suggested that that paragraph should be inserted in the customary place and that the subsequent paragraphs should be renumbered accordingly.

It was so decided.

The portion of chapter XIII contained in document A/CN.4/L.701, as amended, was adopted.

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

CHAPTER II. Summary of the work of the Commission at its fifty-eighth session (concluded) (A/CN.4/L.690)

61. The CHAIRPERSON invited the Commission to resume its consideration of Chapter II of the draft report and drew attention in that connection to the portion of the chapter contained in document A/CN.4/L.690.

Paragraph 6 (concluded)*

62. Mr. PELLET proposed the insertion of the words “adopted” in the place indicated by the square brackets in the second sentence.

63. Mr. CANDIOTI proposed that the words “a set of 10” should be inserted before the words “guiding principles”.

Paragraph 6, as amended, was adopted.

Paragraph 10

64. The CHAIRPERSON suggested that, in the second sentence, the phrase “begin the preparation” should be replaced with the words “should prepare”.

Paragraph 10, as amended, was adopted.

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

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

Closing remarks

65. The CHAIRPERSON paid tribute to the Secretariat for its extraordinary competence and consummate sense of responsibility. As for himself, during the 12 weeks of the Commission’s session, he had discovered the possibilities and limitations of his position as Chairperson. He had learned that the exercise of power and authority was a fiction: the reality was responsibility to others. The Commission was, after all, only an intermediary between the international community and the law, and its work was not entirely its own: it was in the service of the world.

66. Mr. KOSKENNIEMI said that, as the quinquennium came to a close and his tenure on the Commission came to an end, he wished to place on record his gratitude for the experience of collaborating with the other members of the Commission. It had been a transforming experience in how he saw international law, the United Nations and

the interaction between them. He wished to sketch out what he saw as the possibilities and limitations of the Commission and of the United Nations.

67. The possibilities were enormous. The collective wisdom gathered within the Commission existed nowhere else. Its quest to find new topics and new working methods reflected the changing international legal situation. It was a unique international organ in which the opposite of fragmentation took place: the universal could be expressed and heard. The General Assembly was often seen from the outside as a world parliament; even if that was not so, the Commission might be viewed as ministry of justice to the world, preparing legislation meant for universal application. To have such an institution was an enormous asset, something the international community should not dispense with lightly.

68. The limitations in the Commission’s activities could be broken into five categories. First, the background work needed for preparing legislation was often lacking. If the Commission was truly to serve as a world Ministry of Justice, it would need much greater financial and human resources. Second, the Commission had a tendency to view the elaboration of international legislation in terms of a collective exercise in writing legal textbooks. That prevented it from reacting to changing contingencies in the world or seeing its work as a response to actual needs. Third, special interests should be addressed and special expertise brought in. The work on transboundary aquifers in the context of shared natural resources had been a step in the right direction, and more such exercises should be carried out.

69. A fourth limitation was that States had by no means always embraced the outcomes of the Commission’s work. There was no ready recipe for how to convince States and other actors to be more actively involved, however. Fifth, the Commission’s procedures were a perpetual source of concern. The incoming Commission would undoubtedly continue the discussion of procedural issues.

70. Many of the possibilities and limitations in the Commission’s work were influenced by the outside world, and the Commission had no control over them. The outside world was now more unjust, violent and dangerous than it had been five years ago at the start of the current quinquennium. The Commission had not made much of a contribution to alleviating the problems leading to those injustices and dangers. Its task must now be to attack the problems and help prevent the world from becoming more unjust, violent and dangerous in the coming quinquennium. He wished the Commission success in that task.

71. Mr. Sreenivasa RAO, speaking as the most senior member of the Commission, said it was difficult to sum up 20 years of experience, but what he could say, as he departed, was that there was no better legal body for helping to build a better world for justice, equity and the common good. The primacy of law for which the United Nations worked and fought could only be projected through the work of the Commission. The Commission’s summary records, final conclusions and commentaries to the instruments it adopted stood on their

* Resumed from the 2911th meeting.

own and had their own role to play in the development of international law. It was significant that the President of the International Court of Justice, the premier legal body within the United Nations, often cited the Commission's work as the basis for the Court's conclusions on many difficult issues.

72. Speaking from the vantage point of his years of experience, he would advise the Commission not to rush ahead with too many idealistic propositions. Good ideas had to be digested by States and other actors in small doses. The goal of ensuring the primacy of law was a long-term one, and it should be pursued in small steps, judiciously, constructively and steadily. The Commission should avoid becoming involved in too many politically sensitive issues because of the danger of being caught in political crossfire.

73. The Commission's achievements were always a collegial effort. Those of its current session, some on very difficult issues, were no exception. The Commission's strength was in having experienced older members and newer members with the zeal and enthusiasm to take it

further every quinquennium. That mix, continuously coalescing in the work of the Commission, was really its greatest strength.

74. Mr. PELLET, speaking as the secondmost senior member of the Commission, congratulated the Chairperson on his successful stewardship of the session and his particular skill in diminishing tensions. He wished to pay a special tribute to those members who were leaving the Commission. He thanked Mr. Sreenivasa Rao, in particular, for his wisdom and good humour, and said he would be greatly missed.

Closure of the session

75. After the customary exchange of courtesies, the CHAIRPERSON declared the fifty-eighth session of the International Law Commission closed.

The meeting rose at 12.35 p.m.
