

Document:-  
**A/CN.4/2951**

**Summary record of the 2951st meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**2007, vol. I**

*Downloaded from the web site of the International Law Commission  
(<http://legal.un.org/ilc/>)*

Paragraph (16)

63. Mr. PELLET (Special Rapporteur) said that, for the sake of consistency, the words “set forth” in the first line should be replaced by “reflected”.

*Paragraph (16), as amended, was adopted.*

Paragraphs (17) and (18)

*Paragraphs (17) and (18) were adopted.*

*The commentary to draft guideline 3.1.8, as amended, was adopted.*

*Commentary to draft guideline 3.1.9 (Reservations contrary to a rule of jus cogens)*

Paragraphs (1) to (4)

*Paragraphs (1) to (4) were adopted.*

Paragraph (5)

64. Mr. PELLET (Special Rapporteur) said that, in the last footnote to the paragraph, the reference to “paragraph (7)” should be changed to “paragraph (2)” and the words “see paragraph (3) above” should be inserted at the end.

*Paragraph (5), as amended, was adopted.*

Paragraphs (6) to (9)

*Paragraphs (6) to (9) were adopted.*

Paragraph (10)

*The adoption of paragraph (10) was postponed until a later meeting.*

*The meeting rose at 1 p.m.*

## 2951st MEETING

*Tuesday, 7 August 2007, at 3.05 p.m.*

*Chairperson: Mr. Ian BROWNLIE*

*Present: Mr. Cafilisch, Mr. Candiotti, Mr. Comisário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobson, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Mr. Yamada.*

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

**CHAPTER IV. Reservations to treaties (continued) (A/CN.4/L.706 and Add.1-3)**

**B. Consideration of the topic at the present session (continued) (A/CN.4/L.706/Add.1-2)**

1. The CHAIRPERSON invited the Commission to resume its consideration of document A/CN.4/L.706/Add.1.

3. SPECIAL RAPporteur’S CONCLUDING REMARKS

Paragraph 48 (concluded)

2. The CHAIRPERSON recalled that the adoption of paragraph 48 had been deferred, pending the English translation of an amendment to the last sentence. He read out the following proposed text and invited members to comment on the alternatives placed between square brackets: “He wondered, however, whether that last point ought to be mentioned in the text, given that the Guide to Practice only contained [auxiliary] [residuary] [default] rules, which States were free to follow or set aside by contrary treaty provisions.”

3. Mr. PELLET (Special Rapporteur) expressed support for the proposed text and said that the adjective “auxiliary” seemed to be the best translation for the French “*supplétive de volonté*”.

*Paragraph 48, as amended, was adopted.*

*Section B, as amended, was adopted.*

**C. Text of the draft guidelines on reservations to treaties provisionally adopted so far by the Commission (concluded) (A/CN.4/L.706/Add.3)**

2. TEXT OF THE DRAFT GUIDELINES AND COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-NINTH SESSION (concluded)

4. The CHAIRPERSON then invited the Commission to resume its consideration of document A/CN.4/L.706/Add.3.

*Commentary to draft guideline 3.1.6 (Determination of the object and purpose of the treaty) (concluded)*

Paragraph (5) (concluded)

5. The CHAIRPERSON said that the word “Committee” should be replaced by “Commission”, thereby aligning the English text with the French original. He also drew attention to an error in the footnote related to paragraph (5), where the date “1955” should read “1994”. The same correction should be made to all other references to the same work by W. A. Schabas<sup>379</sup> wherever they appeared in the draft report.

*Paragraph (5), as amended, was adopted.*

*The commentary to draft guideline 3.1.6, as amended, was adopted.*

*Commentary to draft guideline 3.1.7 (Vague or general reservations) (concluded)*

Paragraph (7)

6. The CHAIRPERSON said that Mr. Hmoud wished to propose an amendment to paragraph (7) of the commentary to draft guideline 3.1.7, which the Commission had dealt with at the previous meeting. If he heard no objection, he would take it that the procedure was acceptable to the Commission.

*It was so decided.*

<sup>379</sup> W. A. Schabas, “Reservations to human rights treaties: time for innovation and reform”, *Canadian Yearbook of International Law* 1994.

7. Mr. HMOUD queried the appropriateness of the phrase “the so-called ‘Sharia reservation’” in paragraph (7), which implied that all reservations to treaties based on Sharia law were general and vague, whereas some were specific. A case in point was the reservations entered by some States to the Convention on the rights of the child, mention of which was made in the report. He suggested that a phrase along the lines of “some Sharia reservations” would be more appropriate.

8. Mr. PELLET (Special Rapporteur) endorsed the general thrust of Mr. Hmoud’s suggestion; however, basing himself on the French text, he would prefer it to be rendered as: “That same objection arises in connection with some reservations falling under the heading of what is sometimes called the ‘Sharia reservation’”.

*Paragraph (7), as amended, was adopted.*

*The commentary to draft guideline 3.1.7, as amended, was adopted.*

*Commentary to draft guideline 3.1.9 (Reservations contrary to a rule of jus cogens) (concluded)*

9. The CHAIRPERSON said that in the light of consultations between Mr. Pellet and Mr. Gaja, it was proposed that a new paragraph should be added to the commentary to draft guideline 3.1.9.

10. Mr. GAJA proposed that the following text should be added to the commentary to draft guideline 3.1.9 as paragraph (10 bis):

“The draft guideline also covers the case in which, although no rule of *ius cogens* was reflected in the treaty, a reservation would require that the treaty be applied in a manner conflicting with *ius cogens*. For instance, a reservation could be intended to exclude a category of persons from benefiting from certain rights granted under a treaty, on the basis of a form of discrimination that would be contrary to *ius cogens*.”

11. Mr. PELLET (Special Rapporteur) questioned the need for the word “also” and suggested its deletion.

*Paragraph (10 bis), as amended, was adopted.*

*The commentary to draft guideline 3.1.9, as amended, was adopted.*

*Commentary to draft guideline 3.1.10 (Reservations to provisions relating to non-derogable rights)*

Paragraph (1)

12. Mr. GAJA proposed that the phrase “as yet unresolved” in the first sentence should be deleted.

13. Mr. PELLET (Special Rapporteur) said that he objected to that proposal because the word “unresolved” was very important. Draft guideline 3.1.9 did not resolve the dilemma of ascertaining the validity of a reservation to a provision reflecting a norm of *ius cogens*. The Commission had not achieved any agreement on that point, the Drafting Committee had turned the problem on its head

and the result had been a compromise provision which sidestepped the issue. Hence it was quite legitimate to reflect that situation somewhere in the commentaries. He had done that as diplomatically as possible in the commentary to draft guideline 3.1.9, but he had been more explicit in the commentary to draft guideline 3.1.10 because, although the Commission had not been able to settle the matter of reservations to peremptory norms of general international law, the question of reservations to non-derogable obligations could be solved without adopting a stance on *ius cogens*. Thus, the little phrase was meaningful, and he was opposed to its disappearance.

14. Ms. ESCARAMEIA agreed with the Special Rapporteur but said that, as paragraph (1) stood, it seemed to imply that the Commission was on the point of resolving the question, which was untrue. Instead of calling attention to the significance of reservations to *ius cogens* norms, the phrase at issue diminished it, because it implied that draft guideline 3.1.9 was of little or no importance. She would therefore prefer the deletion of the phrase “as yet unresolved” in the first sentence.

15. Mr. NOLTE proposed that the Commission should use compromise wording based on his formal point of departure that no specific assertion should be made in a commentary which was extraneous to an issue. The subject in question had been covered in draft guideline 3.1.9, and if some aspects remained unresolved, that should be stated in the commentary to that draft guideline. Since the Commission purported to have addressed some aspects of the matter in draft guideline 3.1.9, it could not simultaneously claim in the commentary to the next draft guideline that the question was as yet unresolved. Nevertheless, he understood why the Special Rapporteur wished to direct the reader’s attention to the fact that not much had been resolved. Accordingly, it might be possible to say that the question of reservations to non-derogable obligations was very similar to the difficult question of reservations to treaty provisions reflecting peremptory norms of general international law. That would draw attention to the difficulty referred to in the commentary to draft guideline 3.1.9 without adding anything untoward in paragraph (1).

16. The CHAIRPERSON said that two problems arose in connection with paragraph (1): one of substance and the other of opacity, in that the reader would be perplexed about what was meant in that commentary if reference was made to an issue which had not yet been resolved. Further ambiguity stemmed from the fact that if the commentary to draft guideline 3.1.9 reflected a compromise, some people would contend that this was one way of resolving the issue. For that reason, while he would prefer the deletion of the phrase in question, he believed there was room for a thoughtful footnote by the Special Rapporteur, which would take the heat out of the issue but still make the point, albeit not in the text of the commentary.

17. Mr. PELLET (Special Rapporteur) said that he was deeply disappointed that draft guideline 3.1.9 did not answer an important question to which a response ought to have been found. Furthermore, the translation into English was inaccurate, as the words “as yet” did not appear in

the French. He was convinced that the Commission would not resolve the question, to which he would never return, and he therefore urged the retention of the phrase. Moreover, he could not entirely agree with the Chairperson's statement. Nevertheless, as the question of *jus cogens* had not been solved, it was necessary to specifically mention that fact. He therefore proposed the deletion of the phrase "as yet unresolved" and the addition at the end of the sentence, following the footnote reference, of the phrase "it may, however, be resolved separately". That was a meaningful statement which did not rub salt in the wound. All the same, he regretted the position taken by the Drafting Committee and the Commission.

18. Mr. KOLODKIN asked whether in the second sentence of the paragraph the word "objections" referred to the treaty provisions or to the reservations to such provisions.

19. The CHAIRPERSON explained that the word "objections" referred to the treaty provisions.

20. Mr. PELLET (Special Rapporteur) proposed that the sentence should be recast to read "States frequently justify their objections to reservations to such provisions ...".

*Paragraph (1), as amended, was adopted.*

Paragraph (2)

21. Mr. GAJA requested clarification regarding the term "*petitio principii*" and suggested that the first sentence in paragraph (3) should be moved to the end of paragraph (2).

22. Mr. PELLET (Special Rapporteur) said that while he agreed that the first sentence of paragraph (3) should be moved to the end of paragraph (2), he was puzzled as to why Mr. Gaja should be unhappy about the expression *petitio principii*. When the Human Rights Committee had said that "a State has a heavy onus to justify such a reservation" that was, in his eyes, a *petitio principii*: in its eagerness to defend human rights the Committee had said that the State must justify a reservation, but it had not given a single reason for that statement, which had no legal basis and simply mirrored the deeply held conviction of the members of the Human Rights Committee.

23. The CHAIRPERSON suggested that the phrase should read in English: "The last point is question-begging".

*Paragraph (2), as amended, was adopted.*

Paragraph (3)

*Paragraph (3) was adopted.*

Paragraph (4)

24. Ms. ESCARAMEIA said that the first name in the first footnote to the paragraph should be corrected to Mr. António Cançado Trindade.

*Paragraph (4) was adopted with that amendment to the footnote.*

Paragraph (5)

*Paragraph (5) was adopted.*

Paragraph (6)

25. Mr. NOLTE said that he had two problems with the sentence which began with the words "Denmark objected ...". According to his reading of Denmark's objection to the reservations of the United States to articles 6 and 7 of the 1966 International Covenant on Civil and Political Rights, there had been two reasons for the objection: the first had been that the reservations of the United States related to non-derogable right; while the second had been that the reservations were incompatible with the object and purpose of the Covenant. He therefore disagreed with the Special Rapporteur's interpretation of Denmark's objection. Furthermore, he wondered what was meant by "essential provisions" in the same sentence: did it refer to articles 6 and 7 of the International Covenant on Civil and Political Rights? He suspected that the Special Rapporteur had wished to imply that the reservations left the essential provisions of the treaty empty of any substance, because the point was that a reservation to a non-derogable right was incompatible only when it conflicted with the object and purpose of a treaty as a whole. He therefore suggested either the deletion of the whole of paragraph (6) because it did not prove the point, or the reformulation of the last two sentences.

26. Mr. PELLET (Special Rapporteur) said that he partly agreed with Mr. Nolte. He was not in favour of deleting the entire paragraph, as it did partly illustrate the point he was trying to make. But he accepted that he had, perhaps, been stretching the meaning of Denmark's objection. He therefore proposed that the penultimate sentence should be amended to read: "Denmark objected not only because the United States reservations related to non-derogable rights, but also because their wording was such that they left essential provisions of the treaty empty of any substance."

27. Mr. NOLTE said that he could accept the proposed amendment.

*Paragraph (6), as amended, was adopted.*

Paragraphs (7) and (8)

*Paragraphs (7) and (8) were adopted.*

*The commentary to draft guideline 3.1.10, as amended, was adopted.*

*Commentary to draft guideline 3.1.11 (Reservations relating to internal law)*

Paragraphs (1) to (4)

*Paragraphs (1) to (4) were adopted.*

Paragraph (5)

28. Mr. NOLTE said that the first sentence of paragraph (5) was too strongly worded. It was based on the concluding observations of the Human Rights Committee with regard to the United States reservations to the International

Covenant on Civil and Political Rights<sup>380</sup>. He did not think that these observations suggested that the mere fact that the United States had formulated reservations so that it would not have to change its legislation was incompatible with the object and purpose of the treaty; the Human Rights Committee had only expressed its regret that they had that effect. It was easy to imagine cases where a State might formulate a reservation or reservations so that it would not have to change its law immediately, but such reservations would be perfectly legitimate and would not necessarily violate the object and the purpose of the treaty. The aim of the International Covenant on Civil and Political Rights was not to make States change their practice but to secure compliance with its obligations. The object and the purpose of the treaty was the decisive factor, and he therefore suggested that the second part of the sentence should read “even though a treaty’s object and purpose would have it change its practice”.

29. Mr. PELLET (Special Rapporteur) said that although he understood Mr. Nolte’s concerns, he did not understand the solution he was recommending. The problem would not be solved by introducing the idea of the object and purpose of a treaty into the sentence. The difficulty lay in the fact that if a State’s practice was not consonant with a provision of the treaty, the State was expected to change its practice. He failed to see how the amendment proposed by Mr. Nolte would answer the concerns he had expressed, but would not oppose the sentence being worded “even though the correct application of the treaty should lead it to change its practice”.

30. Mr. GAJA drew attention to the reference to the rules of the organization in the first footnote to paragraph (5) and said that, in the light of the Commission’s debate on the rules of international organizations and also of the previous year’s discussion of disconnection clauses, it was necessary to make a proviso concerning the effects which reservations relating to the rules of organizations might have in relations between the organization and its members. Perhaps some wording on that subject could be added to the end of the footnote.

31. The CHAIRPERSON invited Mr. Gaja to produce a written text on that point for the Commission’s consideration.

32. Mr. NOLTE asked whether the Commission really wished to imply that the United States, by formulating its reservations and understandings, had violated the object and purpose of the International Covenant on Civil and Political Rights because it did not wish to change its own law. He fully agreed that certain of its reservations did violate the object and purpose of that instrument, but he did not believe that the Commission supported the principle that when a State ratified a treaty, it could not make reservations designed to ensure that it would not have to change its law forthwith. Of course, the State undertook not to change its law if it was compatible with the treaty, but what was important was that any reservations it made should not violate the object and purpose of the treaty, not the fact that it did not wish to change its law.

Moreover, that was a point which concerned not only the United States but potentially all other States as well. It was not a treaty in the abstract, but the object and purpose of the treaty, that sought to change State practice, which was why a reservation had to be prohibited if it conflicted with that object and purpose. He therefore maintained his proposed amendment.

33. The CHAIRPERSON said that the first sentence of paragraph (5) seemed acceptable as it stood, and it would be unfortunate if it was unnecessarily altered. In any event, the concluding observations of the Human Rights Committee concerning United States policy were reflected verbatim in the footnote whose reference was at the end of the first sentence.

34. Mr. SABOIA said the aim of draft guideline 3.1.11, on reservations relating to internal law, was to make it clear that a State or an international organization could not modify or exclude the legal effect of a treaty because of its internal law. The concluding observations of the Human Rights Committee indicated that the sheer quantity of the reservations made by the United States on grounds of its internal law essentially voided the provisions of the International Covenant on Civil and Political Rights and created an imbalance between the obligations accepted by members in general and by those that made such substantive reservations. He agreed with the change proposed by Mr. Pellet: it was important to preserve the object of draft guideline 3.1.11, which was to prevent internal law from being used as an excuse to block the application of an important provision of a treaty.

35. Mr. PELLET (Special Rapporteur) agreed with the Chairperson’s remark about the link between the footnote whose reference was at the end of the first sentence and the text of paragraph (5). The problem raised by Mr. Nolte might be attributable to a faulty translation from French to English: “would have it change its practice” was not the most accurate equivalent of the French “*vise à*”. The French text made it clear that the object of the treaty was a change in a State’s practice. Mr. Nolte’s proposal simply reflected circuitous reasoning: in attempting to define the phrase “only insofar as it is compatible with the object and purpose of the treaty” contained in draft guideline 3.1.11, the Commission would be saying that something was not compatible with the object and purpose of a treaty if it was not compatible with the object and purpose of the treaty. His own proposal would be to translate the French phrase by the words “aims at”, which would avoid that tautology.

36. Mr. NOLTE said that it was the actual wording of draft guideline 3.1.11 that constituted circular reasoning. He was willing to compromise, however, and suggested that the phrase “a treaty would have it change its practice” should be replaced by “the object of the treaty is to change its practice”. The point of substance was that it was not appropriate for the Commission to state that every time a State formulated reservations that had the effect of preventing it from having to change its law, that was incompatible with the object and purpose of the treaty. Such instances occurred more often than one might think, and not only in the field of human rights. A serious misunderstanding in respect of treaty practice might arise in the future if that point was not made clear.

<sup>380</sup> *Official Records of the General Assembly, Fiftieth session, Supplement No. 40 (A/50/40)*, vol. I, chap. VI, para. 279.

37. Mr. KOLODKIN said that he agreed with Mr. Nolte. The explanation in the first sentence of paragraph (5) went further than the draft guideline itself. There did indeed seem to be a problem with the translation from French into English, but even the French text did not constitute an appropriate commentary on the draft guideline. In addition, the commentary seemed to focus exclusively on reservations to human rights treaties, even though the draft guideline applied to a much wider range of instruments. There were numerous examples of reservations aimed at preserving the integrity of internal law that had been made to treaties having nothing to do with human rights. He cited the example of a reservation to a railway transport treaty, which concerned a very specific provision of the treaty that did not fully correspond to the reserving State's internal law. The reservation was fully compatible with the object and purpose of the treaty; it had been made to a secondary provision of the treaty.

38. Mr. HMOUD said that he agreed with Mr. Nolte. It did not make sense to say that a State could not make a reservation on the basis of its domestic law in order to exclude a certain international obligation; of course it could: the important thing was simply that the reservation should not go against the object and purpose of the treaty. That was precisely why the Human Rights Committee had objected to the position of the United States. It had first made the point that the reservations were regrettable and had then added that reservations designed to preserve internal law were incompatible with the object and purpose of a treaty. Paragraph (5) seemed to prohibit the formulation of reservations that were incompatible with the international obligations set out in the treaty, and not specifically with the object and purpose of the treaty, which was what the text ought to say.

39. Mr. McRAE said that essential difference between the positions espoused by Mr. Nolte and Mr. Pellet was the difference between "object" and "aim". He could go along with either wording.

40. The CHAIRPERSON suggested that, on Mr. Gaja's proposal, the following text should be added to the footnote whose reference was placed after "domestic law" in the first sentence of paragraph (5): "However, the reference to the rules of the organization may not raise a similar problem if the reservation only applies to the relations between the organization and its members."

41. Mr. McRAE suggested that the opening phrase of the footnote, which currently read "Or international organizations their 'rules of the organization'", should be reworded to read: "Or in the case of international organizations, the 'rules of the organization'".

42. Mr. NOLTE proposed that the phrase "even though a treaty would have it change its practice" in the first sentence of paragraph (5) should be amended to read "even though the treaty's aim is to change its practice". He further proposed that the footnote reference at the end of that sentence should be inserted earlier in the sentence, after the words "any new obligation". That should make it clear that the example of the reservations entered by the United States given in that footnote related to a situation in which the State refused to accept any new obligation and not to the aim of the treaty to change its practice.

43. Mr. GAJA proposed that the phrase "to change its practice" should be replaced by "to change a practice of States parties to the treaty".

*Paragraph (5), including the text of the footnote whose reference was placed after "domestic law" in the first sentence, as amended, was adopted.*

Paragraphs (6) to (8)

*Paragraphs (6) to (8) were adopted.*

*The commentary to draft guideline 3.1.11, as amended, was adopted.*

*Commentary to draft guideline 3.1.12 (Reservations to general human rights treaties)*

Paragraph (1)

*Paragraph (1) was adopted.*

Paragraph (2)

44. Mr. PELLET (Special Rapporteur), replying to a question from Mr. NOLTE, said that the adjective "general" that qualified "reservation" in the final sentence needed to be retained because it was crucial to the meaning of the entire paragraph. General reservations could not be made in connection with certain rights, such as the right to life, for example, but they could be made with regard to some rights that were of lesser importance. The whole point was the general nature of the reservation, not simply the ability to make a reservation.

*Paragraph (2) was adopted.*

Paragraph (3)

45. The CHAIRPERSON, speaking as a member of the Commission, said that the second sentence singled out a particular author as "hardly to be suspected of 'anti-human-rightsism'". That seemed gratuitous and should be deleted.

*Paragraph (3), as amended, was adopted.*

Paragraphs (4) and (5)

*Paragraphs (4) and (5) were adopted.*

Paragraph (6)

46. Mr. NOLTE said that draft guideline 3.1.12 referred to the "indivisibility, interdependence and interrelatedness" of the rights set out in a human rights treaty. That wording was explained in paragraph (6) of the commentary, which seemed to suggest that all rights in human rights treaties were interrelated, interdependent and indivisible. That was not true: they were to some degree, but certain human rights could nevertheless be the subject of reservations. He suggested the addition of a new sentence at the end of the paragraph to explain that idea, which would read: "This element should not be understood, however, to mean that every single human right contained in a general human rights treaty is an essential element thereof".

47. Mr. PELLET (Special Rapporteur) pointed out that paragraph (7) conveyed that notion, and conveyed it more clearly. He saw no reason to include the sentence proposed by Mr. Nolte but would nevertheless not oppose it.

48. Mr. NOLTE said that paragraph (7) covered a different aspect of the draft guideline than the one addressed in his proposal. He would not, however, press for the adoption of his proposal.

*Paragraph (6) was adopted.*

Paragraph (7)

*Paragraph (7) was adopted.*

Paragraph (8)

*Paragraph (8) was adopted, with an editorial correction proposed by Mr. Pellet to the French text.*

*The commentary to draft guideline 3.1.12, as amended, was adopted.*

*Commentary to draft guideline 3.1.13 (Reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of the treaty)*

Paragraphs (1) to (4)

*Paragraphs (1) to (4) were adopted.*

Paragraphs (5) and (6)

49. Mr. NOLTE said that the reference in paragraph (5) to the “extreme” position taken by the European Court of Human Rights in the *Loizidou* case seemed out of place and should be deleted. He proposed that the phrase “took a position that was just as extreme” in the first sentence of that paragraph should be deleted and that the remainder of that sentence should be merged with the second sentence.

50. Mr. PELLET (Special Rapporteur) endorsed that proposal and added that in paragraph (6) the phrase “with all its nuances” should be deleted.

51. The CHAIRPERSON, supported by Mr. PELLET (Special Rapporteur), pointed out that subparagraph 2 of paragraph (6) was not grammatically consistent with the other two subparagraphs and suggested that the inconsistency should be corrected.

*Paragraphs (5) and (6), as amended, were adopted.*

Paragraph (7)

52. Mr. NOLTE said that, for the sake of accuracy and clarity, the words “might” should be deleted and the words “the two types of provision” should be replaced by “treaty provisions concerning dispute settlement and those concerning the monitoring of the implementation of a treaty”, words similar to those used in the previous paragraph.

53. Mr. PELLET (Special Rapporteur) said that as long as the French text remained unchanged, he could go along with that proposal.

54. Mr. CAFLISCH said that the French text could not possibly remain unchanged, since the text proposed in English diverged widely from the original French.

55. Mr. SABOIA asked for clarification as to whether it was customary in the commentary to mention that some members had disagreed on certain points, as was done at the start of paragraph (7).

56. Mr. PELLET (Special Rapporteur) said that it was legitimate to mention that there might have been disagreement among Commission members, since the Commission had just undertaken the first reading of the text; moreover, such a statement reflected the real situation. The second amendment proposed by Mr. Nolte, however, would not improve the French phrase “*dissocier ces deux types de clauses*”, where the word “*ces*” made it clear that there were two different types of provisions involved. He proposed that the English version should be aligned with the French text to read: “a distinction between these two types of provisions”.

57. Mr. McRAE expressed support for Mr. Pellet’s proposal, which would make the paragraph read more clearly.

*Paragraph (7), as amended, was adopted.*

*The commentary to draft guideline 3.1.13, as amended, was adopted.*

*Section C as a whole, as amended, was adopted.*

#### CHAPTER V. *Shared natural resources (concluded)\** (A/CN.4/L.709 and Add.1)

58. The CHAIRPERSON drew attention to section C of Chapter V of the draft report of the International Law Commission on the work of its fifty-ninth session, which appeared in document A/CN.4/L.709/Add.1, and contained the report of the Working Group on shared natural resources. The Commission had already considered and taken note of that report. He therefore took it that the Commission wished to include it as section C of Chapter V of the Commission’s report.

*It was so decided.*

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

#### CHAPTER VII. *Effects of armed conflicts on treaties (concluded)\*\** (A/CN.4/L.708 and Corr.1 and Add.1)

59. The CHAIRPERSON drew attention to section C of Chapter VII, which appeared in document A/CN.4/L.708/Add.1 and contained the report of the Working Group on the effects of armed conflicts on treaties. The Commission had already considered and adopted that report. He therefore took it that the Commission wished to include it as section C of Chapter VII of the Commission’s report.

*It was so decided.*

\* Resumed from the 2948th meeting.

\*\* Resumed from the 2949th meeting.

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

**CHAPTER VIII. Responsibility of international organizations (continued) (A/CN.4/L.713 and Add.1-3)**

60. The CHAIRPERSON invited the Commission to consider section C of chapter VIII, which appeared in document A/CN.4/L.713/Add.2.

**C. Text of the draft articles on responsibility of international organizations provisionally adopted so far by the Commission (continued) (A/CN.4/L.713/Add.1-3)**

**2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-NINTH SESSION (continued)**

*Commentary to draft article 37 (Forms of reparation)*

Paragraphs (1) and (2)

*Paragraphs (1) and (2) were adopted.*

*The commentary to draft article 37 was adopted.*

*Commentary to draft article 38 (Restitution)*

*The commentary to draft article 38 was adopted.*

*Commentary to draft article 39 (Compensation)*

Paragraph (1)

61. Mr. PELLET said that the quotation from the letter of the Secretary-General was not entirely appropriate, because it did not concern compensation as much as it did the principle of responsibility. He wondered whether the relevant correspondence might not contain a more apposite illustration of the practice of international organizations.

62. Mr. GAJA (Special Rapporteur) said that the quotation should be read in connection with the subject of the draft article and in the context of the letter from the Secretary-General to the Permanent Representative of the Soviet Union, quoted in paragraph (2), who had challenged the legality of the payment of compensation by the United Nations. He had quoted from that case because it was the best-known example of an international organization paying compensation to States for damages suffered by their nationals. He was, however, prepared to search for another illustration of the point to be conveyed.

*Subject to possible improvements by the Special Rapporteur, paragraph (1) was adopted.*

Paragraphs (2) and (3)

*Paragraphs (2) and (3) were adopted.*

Paragraph (4)

63. Ms. ESCARAMEIA said that there had been considerable discussion within both the Commission and the Drafting Committee on compensation to individuals. She conceded that the issue was partly covered by draft articles 36 and 42, but draft article 39 dealt with compensation most directly, and for that reason she proposed an additional paragraph along the following lines:

“Since article 39 must be read in conjunction with paragraph 2 of article 36 on the scope of international obligations, the existence of rights that directly accrue to the individual is not prejudiced.”

A footnote should then refer the reader to General Assembly resolution 52/247 of 26 June 1998 on third-party liability: temporal and financial limitations.

64. The CHAIRPERSON said that the proposed amendment was substantive. He therefore requested Ms. Escarameia to circulate her proposal, which would be considered at the next meeting.

**Programme, procedures and working methods of the Commission and its documentation (concluded)\*\* (A/CN.4/577 and Add.1-2, sect. G, A/CN.4/L.716, A/CN.4/L.719)**

[Agenda item 8]

REPORT OF THE PLANNING GROUP

65. Mr. VARGAS CARREÑO (Chairperson of the Planning Group), introducing the report of the Planning Group (A/CN.4/L.716), said that the Planning Group had held six meetings. Its agenda had included relations between the Commission and the Sixth Committee; the establishment of and the work of the Working Group on the long-term programme of work; the work programme for the remainder of the quinquennium; the Commission's documentation and publications, including the publication of Commission documents by members of the Commission, the waiver of the 10-week advance submission requirement, the backlog of *Yearbooks* and the renewal of mandates of current publications; the date and place of the sixtieth session; and commemoration of the sixtieth anniversary of the Commission.

66. Two issues warranted particular attention: relations between the Commission and the Sixth Committee and the sixtieth anniversary of the Commission. The Planning Group was of the view that regular discussion on how to improve the dialogue between the Commission and the Sixth Committee would be useful. It had also considered ways of making Chapters II and III of the Commission's annual report more user-friendly. For example, suggestions had been made concerning the drafting of executive summaries in Chapter II and further improvement in the preparation of issues raised by the special rapporteurs in Chapter III. The Planning Group had been unable to complete its consideration of those matters.

67. A number of suggestions had been made concerning the commemoration of the Commission's sixtieth anniversary; they were listed in paragraph 24 of the report. In the light of consultations he had held, he wished to propose that a group be established to deal with organizational matters and to make specific suggestions for the holding of a solemn meeting with dignitaries and a meeting with legal advisers to discuss the work of the Commission. The group would be composed of Mr. Candiotti, Mr. Comissário Afonso, Mr. Galicki, Mr. Pellet and Mr. Yamada,

\*\*\* Resumed from the 2944th meeting.

with the Chairperson of the Commission and the Chairperson of the Planning Group serving *ex officio*. He hoped that the group would be able to meet before the end of the current session to hold a preliminary exchange of views and to consider how to communicate after the closure of the session in order to make arrangements. Among the issues to be discussed were the dates of the commemoration, which depended on the schedule of the Secretary-General of the United Nations, and an appropriate agenda.

68. As indicated in paragraph 26 of the report, it was recommended that the sixtieth session be held in Geneva from 5 May to 6 June and from 7 July to 8 August 2008. Should the recommendations of the Planning Group be accepted by the Commission, they would be reproduced, with any necessary adjustments, as Chapter X of the Commission's report on the work of its fifty-ninth session.

69. The CHAIRPERSON invited the Commission to consider the report of the Planning Group (A/CN.4/L.716) with a view to its adoption.

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

Paragraphs 1 and 2

*Paragraphs 1 and 2 were adopted.*

1. RELATIONS BETWEEN THE COMMISSION AND THE SIXTH COMMITTEE

Paragraph 3

70. Mr. PELLET suggested the insertion of an electronic link to the Official Documents System of the United Nations (ODS) for ease of reference.

*Paragraph 3, as amended, was adopted.*

Paragraph 4

*Paragraph 4 was adopted.*

2. WORKING GROUP ON THE LONG-TERM PROGRAMME OF WORK

Paragraph 5

*Paragraph 5 was adopted.*

3. WORK PROGRAMME OF THE COMMISSION FOR THE REMAINDER OF THE QUINQUENNIAL

Paragraph 6

71. Mr. PELLET proposed the following amendments to subparagraph (a) (Reservations to treaties). For 2009, the existing paragraph should be replaced by the following: "The Special Rapporteur is expected to submit his fourteenth report on effects of reservations and objections to reservations and probably on succession of States and international organizations with regard to reservations, which would enable the Commission to complete the first reading of the draft Guide to Practice." The paragraph relating to 2010–2011 would then read: "The Special Rapporteur is expected to submit his fifteenth and sixteenth reports with a view to the completion of the second reading of the draft Guide to Practice."

72. Ms. ESCARAMEIA asked whether, in subparagraph (c) (Effects of armed conflicts on treaties), the paragraph relating to 2008 should contain a reference to the forthcoming addendum to the third report.

73. The CHAIRPERSON, speaking in his capacity as Special Rapporteur, said that he saw no need for such a reference. The addendum to his report would be only one of several studies, including that by the Working Group.

74. Mr. GALICKI noted, with regard to subparagraph (f) (The obligation to extradite or prosecute (*aut dedere aut judicare*)), that the paragraph relating to 2010–2011 should state that "the Commission will complete the first reading ...".

75. The CHAIRPERSON said that while each special rapporteur would doubtless look at the programme relating specifically to his work, there nevertheless remained a potential problem with divergences from uniformity of style. He took it that the Secretariat would attend to the matter.

*Paragraph 6, as amended, was adopted.*

4. HONORARIA

Paragraph 7

*Paragraph 7 was adopted.*

5. DOCUMENTATION AND PUBLICATIONS

(a) External publication of International Law Commission documents

Paragraphs 8 and 9

*Paragraphs 8 and 9 were adopted.*

(b) Processing and issuance of reports of Special Rapporteurs

Paragraph 10

*Paragraph 10 was adopted.*

Paragraph 11

76. Mr. PELLET asked why, in a paragraph relating to the Planning Group, a reference was suddenly made to the Commission itself. Secondly, the phrase in the French text "*a reconnu*" sounded awkward. The phrase "*était conscient de*" would be preferable. Lastly, he wished to know what the consequences of not adhering to the established word-limit would be.

77. The CHAIRPERSON said that the word "recognized" was perfectly acceptable in the English text. As for the reference to "the Commission" rather than "the Planning Group", all references to the Planning Group would automatically become references to the Commission in the final report. Any anomalies were therefore ephemeral.

78. Ms. ARSANJANI (Secretary to the Commission) said that, as noted in paragraph 12 of the report, the Commission believed that an *a priori* limitation could not be placed on the length of its documentation. Commission documents, including reports by special rapporteurs, commonly did not respect the word-limit; the reference to four weeks in paragraph 11 had been inserted in order to

protect the Department for General Assembly and Conference Management, which was not obliged to process documents exceeding the established word-limit within four weeks. The request for the exemption from the 10-week rule for submission of pre-session documents had been made in recognition of the fact that, without the exemption, all documents, including the Special Rapporteurs' reports, would have had to be submitted 10 weeks before the opening of the session.

Paragraph 12

*Paragraph 12 was adopted.*

(c) Backlog relating to the *Yearbook* of the International Law Commission

Paragraph 13

*Paragraph 13 was adopted.*

(d) Other publications and the assistance of the Codification Division

Paragraphs 14 and 15

*Paragraphs 14 and 15 were adopted.*

Paragraph 16

79. Mr. PELLET said that the words “in English” should be inserted after the phrase “the Codification Division issued this publication”. The publication had not appeared in any of the other official languages.

*Paragraph 16, as amended, was adopted.*

Paragraphs 17 to 23

*Paragraphs 17 to 23 were adopted.*

6. COMMEMORATION OF THE SIXTIETH ANNIVERSARY OF THE COMMISSION

Paragraph 24

80. Mr. NOLTE said that he had previously suggested that academic institutions should be encouraged to participate in the observance of the Commission's sixtieth anniversary. He therefore proposed that a comma and the words “academic institutions” should be inserted after the words “professional associations” in paragraph 24 (c).

81. Mr. VARGAS CARREÑO endorsed that proposal.

*Paragraph 24, as amended, was adopted.*

Paragraph 25

82. The CHAIRPERSON said that a footnote listing the members of the group would be added to the paragraph.

*Paragraph 25, as amended, was adopted.*

**B. Date and place of the sixtieth session of the Commission**

Paragraph 26

*Paragraph 26 was adopted.*

*The report of the Planning Group as a whole, as amended, was adopted.*

*The meeting rose at 6 p.m.*

## 2952nd MEETING

*Wednesday, 8 August 2007, at 10.05 a.m.*

*Chairperson:* Mr. Ian BROWNLIE

*Present:* Mr. Cafilisch, Mr. Candioti, Mr. Comisário Afonso, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Mr. Yamada.

### Cooperation with other bodies (concluded)\*

[Agenda item 10]

STATEMENT BY THE REPRESENTATIVE  
OF THE COUNCIL OF EUROPE

1. The CHAIRPERSON invited Mr. Lezertua, Director of Legal Advice and Public International Law of the Council of Europe, to take the floor.

2. Mr. LEZERTUA (Director, Legal Advice and Public International Law of the Council of Europe) said that the Warsaw Declaration and Action Plan, which had been adopted at the Council of Europe Summit held in 2005, attached great importance to legal activities. In the past year, the Council of Europe had focused much of its attention on action to combat terrorism. Since November 2001, it been endeavouring to make a practical contribution by offering the added value it had created to strengthen legal action and cooperation against terrorism and its sources of funding, and to safeguard fundamental values. It continued to carry out its work in that regard with a view to the full implementation of the standards adopted and the strengthening of the capacity of States to combat terrorism effectively while guaranteeing full respect for the human rights and fundamental freedoms without which Europe could not exist.

3. The new Council of Europe Convention on the Prevention of Terrorism, adopted in May 2005, had been followed by the adoption of Security Council resolution 1624 (2005) of 14 September 2005, which was based on the Convention. The Council of Europe Convention on the Prevention of Terrorism had entered into force on 1 June 2007 and had already been signed by 39 member States of the Council of Europe. It was the first of the three conventions adopted at the Warsaw Summit to enter into force. In addition, the new Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, which took account of recent trends in that regard, particularly the recommendations of the Financial Action Task Force, had been signed by 25 countries and ratified by two, and would enter into force when six States had ratified it. Those two conventions were open, under

\* Resumed from the 2944th meeting.