

Document:-
A/CN.4/3026

Summary record of the 3026th meeting

Topic:
Cooperation with other bodies

Extract from the Yearbook of the International Law Commission:-
2009, vol. I

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70. Draft guideline 3.3 was entitled “Consequences of the non-validity of a reservation”, as originally proposed. The draft guideline, which had been referred to the Drafting Committee in 2006 following an indicative vote, had given rise to extensive debate in the Committee. Some members had agreed with the Special Rapporteur’s view that there was no distinction to be made, with regard to the consequences of invalidity, between the different grounds for invalidity listed in draft guidelines 3.1. Other members had considered that the consequences of the invalidity of a reservation might be different, depending on the grounds for such invalidity. Furthermore, some members had been of the view that it was premature to adopt the draft guideline, since the Commission had not yet examined the consequences arising out of the invalidity of a reservation.

71. The Drafting Committee had finally agreed on a text that was largely based on that originally proposed by the Special Rapporteur. However, following a suggestion made in the plenary Commission, the words “explicit or implicit”, referring to the prohibition of a reservation, had been deleted, in order to bring the text into line with that of other draft guidelines provisionally adopted by the Commission. Moreover, an explicit reference to the consequences of invalidity had been included in the text. The provision thus stated the principle that a reservation formulated in spite of a prohibition arising from the provisions of the treaty or in spite of its incompatibility with the object and purpose of the treaty was not valid, without there being any need to distinguish between the consequences of those grounds for invalidity. He noted, however, that, according to some members, the statement contained in the draft guideline should not be interpreted as prejudging any final determination as to whether the consequences of the various grounds for invalidity were necessarily identical. Some members had also been of the view that the draft guideline might need to be revisited in the light of the outcome of the Commission’s consideration of the question of the consequences of the invalidity of a reservation.

72. Draft guideline 3.3.1, which was entitled “Non-validity of reservations and international responsibility”, enunciated the principle that the formulation of an invalid reservation produced its consequences pursuant to the law of treaties and did not, in itself, engage the international responsibility of the State or international organization that had formulated the reservation.

73. The draft guideline as adopted by the Drafting Committee was largely based on the text proposed by the Special Rapporteur, which had not given rise to many comments during the plenary debate in 2006. Some minor changes had been introduced by the Committee to the text proposed by the Special Rapporteur, namely the replacement of the word “effects” by the word “consequences”; the replacement of the expression “within the framework of” by the expression “pursuant to”; the replacement in the English text of the words “shall not” by the words “does not”; and the addition of the word “international” before the word “responsibility” in both the text and the title of the draft guideline.

74. The view had been expressed in the Committee that the formulation of a reservation incompatible with

jus cogens would engage the international responsibility of the author of the reservation. The majority of members, however, had been of the opinion that the general statement contained in the draft guideline remained accurate, as far as the formulation of the reservation was concerned. The commentary would indicate that the purpose of the words “in itself” was to clarify that the draft guideline referred only to the formulation of an invalid reservation and was without prejudice to the consequences that might be attached, in terms of international responsibility, to any conduct that could be adopted by a State or an international organization in relation to, or as a consequence of, the formulation of an invalid reservation. He hoped that the Commission would be in a position to adopt the draft guidelines.

75. The CHAIRPERSON, after noting that the Special Rapporteur had offered to write the commentaries to the draft guidelines, said that he took it that the Commission wished to adopt draft guidelines 3.3 and 3.3.1.

It was so decided.

The meeting rose at 12.45 p.m.

3026th MEETING

Thursday, 23 July 2009, at 10 a.m.

Chairperson: Mr. Ernest PETRIČ

Present: Mr. Al-Marri, Mr. Cafilisch, Mr. Candioti, Mr. Dugard, Ms. Escameia, Mr. Fomba, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Ojo, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vascianie, Mr. Vázquez-Bermudez, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue.

Cooperation with other bodies (*concluded*)

[Agenda item 14]

STATEMENT BY THE REPRESENTATIVE OF THE ASIAN–AFRICAN LEGAL CONSULTATIVE ORGANIZATION

1. The Chairperson invited Mr. Singh, President of the forty-seventh session of the Asian–African Legal Consultative Organization (AALCO), to address the Commission.

2. Mr. Singh (Asian–African Legal Consultative Organization) said that his organization attached the greatest importance to its traditional and long-standing relationship with the International Law Commission. One of the functions of AALCO under its statute was to study the subjects under consideration by the Commission and to forward to it the views of its member States. Over the years, that had forged a closer relationship between the

two organizations. It had also become customary for the Secretary-General of AALCO to present the views expressed by member States participating in the annual session of AALCO, but the new Secretary-General, Mr. Rahmat Mohamad, had been unable to attend, as he was occupied with the preparations for the forty-eighth session of AALCO.

3. AALCO, originally known as the Asian Legal Consultative Committee (ALCC), had been constituted on 15 November 1956 as an outcome of the historic Asian-African Conference, held in Bandung, Indonesia, in April 1955. Seven Asian States—Egypt, India, Indonesia, Iraq, Japan, Myanmar and Sri Lanka—had been the founding members. In 1958, the name had been changed to Asian-African Legal Consultative Committee in order to enable African countries to become members. There were currently 47 member countries from Asia and Africa.

4. The purposes and objectives of AALCO, as provided in its statute, were to serve as an advisory body to its member States in the field of international law and as a forum for Asian-African cooperation in legal matters of common concern; consider issues related to international law that might be referred to it by its member States; exchange views, experiences and information on matters of common concern having legal implications and make recommendations thereon; communicate to the United Nations, other institutions and international organizations the views of the organization on matters of international law referred to it; consider topics being studied by the International Law Commission, forwarding the views of AALCO to the Commission, considering the Commission's reports and, wherever necessary, making recommendations thereon; and, lastly, undertake, with the consent of or at the request of its member States, such activities as might be deemed appropriate for the fulfilment of its functions and purposes.

5. There were thus three ways in which a topic might be placed on the AALCO work programme: at the request of a member State; on the initiative of the Secretary-General; or as follow-up to the work of the International Law Commission. The AALCO secretariat prepared studies on each topic for consideration at the annual session. The annual session was the plenary organ of the organization and was held in one of the member States, by rotation, insofar as possible, between Asia and Africa. Observer delegations representing governments and international organizations from all regions of the world also participated.

6. AALCO had already examined a wide range of issues of international law that were under consideration by the United Nations, specifically by the International Law Commission and the Sixth Committee of the General Assembly. The topics currently on its agenda included matters relating to the work of the International Law Commission, the law of the sea, extraterritorial application of national legislation, international terrorism, the ICC, cooperation against trafficking in women and children, environment and sustainable development, work of UNCITRAL and other international organizations in the field of international trade law, the status and treatment of refugees, protection of migrant workers, and human rights. In 1980, in recognition of the growing relevance of the work of AALCO

to the United Nations, the General Assembly had decided to accord the organization permanent observer status. An item entitled "Cooperation between the United Nations and the Asian-African Legal Consultative Organization" had since been placed biennially on the agenda of the General Assembly and considered in plenary.

7. In the year since its forty-seventh annual session, AALCO had engaged in various activities. On 18 March 2009, with the assistance of the Government of Japan, it had organized a seminar on "The International Criminal Court: emerging issues and future challenges", which had examined various aspects of the Rome Statute of the International Criminal Court, the contemporary relevance of the Statute to AALCO member States, the progress made on defining the crime of "aggression" and matters relating to the forthcoming Review Conference of the Rome Statute. On 24 October 2008, a joint meeting of AALCO and the International Law Commission had been held in New York. Mr. Yamada had briefed the meeting on the Commission's work on shared natural resources and Mr. Perera had given a detailed description of the key issues on the Commission's agenda of special interest to AALCO member States, such as effects of armed conflicts on treaties, responsibility of international organizations, protection of persons in the event of disasters and immunity of State officials from foreign criminal jurisdiction. The meeting of legal advisers of AALCO member States, also held on 24 October 2008 in New York, had provided an opportunity for an exchange of views on issues under consideration by the Sixth Committee. The President of the International Court of Justice, the Legal Counsel of the United Nations and the Vice-Chairperson of the Sixth Committee had addressed the meeting. In addition to AALCO member States, several non-member States had participated in the meeting.

8. The Commission might recall that the General Assembly, in its resolution 62/66 of 6 December 2007, had invited Member States, in association with regional organizations, professional associations, academic institutions and members of the International Law Commission, to convene national or regional meetings to be devoted to the work of the Commission on the occasion of its sixtieth anniversary. Accordingly, on 2 December 2008, AALCO had organized a seminar to celebrate the Commission's sixtieth anniversary, focusing on the role of the Commission in the twenty-first century, interlinkages between the work of the Commission and AALCO and the question of how to ensure adequate reflection of Asian-African concerns in the Commission's work. In addition to Mr. Perera and himself, Mr. Momtaz, a former Chairperson of the Commission, had participated in the seminar, which had highlighted the importance of member States participating in the Commission's work and contributing to it by responding in a timely manner to questionnaires sent to them. At the meeting, a message had been addressed to the Commission by AALCO on behalf of its member States, commending it for its contributions to the codification and progressive development of international law. He had presented a copy of that message to the Chairperson of the Commission. Lastly, AALCO looked forward to continuing to work in close cooperation with the Commission, and he invited members of the Commission to participate in the forty-eighth annual session, which would be held in

Putrajaya, the administrative capital of Malaysia, from 17 to 20 August 2009.

9. The CHAIRPERSON thanked Mr. Singh for his account of the activities of AALCO and invited any member of the Commission who so wished to ask questions. The message from AALCO to the Commission would be distributed to members.

10. Mr. DUGARD said that he had heard that the African Union Commission on International Law had been established and asked whether AALCO had already had any contact with that body.

11. Mr. HASSOUNA asked what the priorities of the newly elected Secretary-General of AALCO were and whether he envisaged a more active role for the organization that he headed.

12. Ms. ESCARAMEIA enquired whether there were summary records of the work of AALCO and, if so, whether they could be made available to the Commission.

13. With regard to the seminar organized in Japan on the ICC, she said she would like to know what the conclusions of the seminar had been, particularly in view of the fact that hardly any Asian States were party to the Rome Statute of the International Criminal Court, and whether technical or legal assistance in relation to the Statute had been envisaged.

14. Mr. PERERA suggested that consideration be given to how relations between AALCO and both the Commission and the Sixth Committee could be improved still further. The timing of the annual session of AALCO in relation to the Commission's was very important in that respect. Recalling the significant role that working groups had played in the past in respect of the law of the sea, he enquired whether there was any intention of reconstituting such groups, which could work on important topics between the annual sessions.

15. Sir Michael WOOD asked what topics AALCO would like to see studied by the Commission and which aspects of the topics it now studied had aroused the most interest at the annual session of AALCO.

16. Mr. VASCIANNIE enquired, first, how AALCO was structured and whether that structure enhanced its contributions to the Commission's work and, secondly, what the reactions of its member States were when AALCO asked them to make a timely response to questionnaires sent out by the Commission.

17. Ms. XUE said it would be interesting to hear what links had been created between AALCO and the newly established African Union Commission on International Law. Noting that in recent years, a growing number of bodies had been set up to promote international law at both the national and international level, such as the European Society of International Law and the Asian Society of International Law, she said she wondered, in general, what role AALCO intended to play to encourage the development of international law in that new environment. She also wished to know what topics under

consideration by AALCO might be of interest to the international community as a whole. Lastly, she asked how the AALCO member States saw the current situation of international criminal law.

18. Mr. FOMBA asked about the level of participation in AALCO by French-speaking countries, including those in Africa, and what the outlook was for cooperation between AALCO and the African Union Commission on International Law and other organizations or bodies, including the International Law Commission.

19. Mr. HMOUD said that AALCO had recently been seen to organize conferences, meetings and seminars without really tackling substantive issues. In his view, an issues-oriented approach would be desirable. He asked whether AALCO had rectified that tendency and decided to concentrate more on truly legal topics.

20. Mr. WISNUMURTI commended AALCO for its contribution to the development of international law, particularly the law of the sea. He asked what AALCO was now doing to contribute in various forums to the development of international law, and what the outcomes had been.

21. Mr. SINGH (Asian-African Legal Consultative Organization) thanked members of the Commission for their questions. With regard to cooperation between the African Union Commission on International Law and AALCO, he said that as far as he knew there had been no contact between the two organizations. He would, however, raise the question with the Secretary-General of AALCO on his return, and he hoped that such contacts would be established between the two organizations during the forthcoming annual session of AALCO.

22. Summary records of the annual sessions of AALCO were published periodically, and he would ensure that they were made available to members of the Commission. As for the priorities of the new Secretary-General, his primary intention was to put the organization on a sounder financial footing by encouraging member States to pay their dues in a timely fashion. When AALCO had more resources, it would be able to expand its activities. The new AALCO headquarters in New Delhi had been provided by the Government of India. The secretariat had moved there in 2008 and it was to be hoped that the move would help to scale up the organization's activities and make them more useful to member States. A number of members of the Commission had referred to the contributions of AALCO to work on the law of the sea, the law of treaties and other branches of international law, but had expressed concern that the organization's current work programme no longer reflected the same degree of interest in the work of the United Nations and other international organizations. He was confident, however, that, when AALCO had finally settled into its new headquarters, it would be able to focus more on substantive work.

23. Concerning the organization's next annual session, he said that, in addition to the usual agenda items, it would focus on migration, trafficking in persons and smuggling of migrants. In the area of the law of the sea, it would consider maritime security and piracy.

24. As to the structure of AALCO, he said that the organization was made up of member States represented at intersessional meetings by governmental delegations which, at annual sessions, might be headed by ministers or attorneys general, thus ensuring a high level of representation. AALCO also maintained cooperative relations with various associations of international law, including the Indian Society of International Law and other bodies based in New Delhi such as the regional delegation of the ICRC, the Office of the United Nations High Commissioner for Refugees and other United Nations institutions. When the organization's financial situation improved, contacts would be developed with other international law associations, including CAHDI and the IAJC. With regard to the question by Mr. Fomba, he said that Cameroon had recently joined AALCO and other French-speaking countries would probably follow suit. Lastly, referring to the question about issues-oriented approaches to international law raised by Mr. Hmoud, he said that the idea would certainly be given consideration in years to come.

The meeting rose at 10.45 a.m.

3027th MEETING

Friday, 24 July 2009, at 10.05 a.m.

Chairperson: Mr. Ernest PETRIČ

Present: Mr. Al-Marri, Mr. Caflisch, Mr. Candioti, Mr. Dugard, Ms. Escameia, Mr. Fomba, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Ojo, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue.

Expulsion of aliens (*continued*)* (A/CN.4/604, A/CN.4/606 and Add.1, sect. E, A/CN.4/611, A/CN.4/617, A/CN.4/618)

[Agenda item 6]

REPORT OF THE DRAFTING COMMITTEE

1. Mr. VÁZQUEZ-BERMÚDEZ (Chairperson of the Drafting Committee), presenting a short progress report on the topic "Expulsion of aliens", recalled that, in 2007, the Commission had referred draft articles 1 and 2—proposed by the Special Rapporteur in his second report²⁶⁸ and subsequently revised in the light of debate at the plenary meeting²⁶⁹—and also draft articles 3 to 7 (contained in the third report²⁷⁰) to the Drafting Committee.

2. At that time, the Drafting Committee had provisionally adopted draft articles 1 (Scope) and 2 (Use of terms), while recognizing the need to revisit certain questions at a later stage. In 2008, it had decided to add a new paragraph 2 to draft article 1²⁷¹ in order to exclude from the scope of the draft articles aliens whose departure from the territory of a State might be governed by special rules of international law, namely diplomats or consular or other officials of a foreign State and agents of an international organization. The Committee had also been able provisionally to adopt draft article 3 (Right of expulsion), which was largely based on the text proposed by the Special Rapporteur.

3. During the current session, the Drafting Committee had held eight meetings on the topic, from 6 to 8 and from 11 to 14 May 2009. As in previous years, it had decided that the draft articles provisionally adopted would remain in the Committee until more draft articles had been completed.

4. The Drafting Committee had considered draft articles 4 to 7. Thus far it had not been able to reach agreement on the text of draft article 4 (Non-expulsion by a State of its nationals), owing to divergent views among the members on whether exceptions to the prohibition of the expulsion of nationals should or could be envisaged. It had been able provisionally to adopt draft article 5 (Non-expulsion of refugees), draft article 6 (Non-expulsion of stateless persons) and draft article 7 (Prohibition of collective expulsions). Draft articles 5 and 6, as provisionally adopted by the Committee, were largely based on the relevant provisions of, respectively, the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons. Paragraph 2 of draft article 5, however, extended protection to a refugee who, although unlawfully present in the territory of the receiving State, had applied for recognition of refugee status.

5. Draft article 7, as provisionally adopted by the Drafting Committee, was based on the text originally proposed by the Special Rapporteur. Paragraph 4, however, which dealt with collective expulsions in times of armed conflict, was partially based on a revised text proposed by the Special Rapporteur in the light of the plenary debate in 2007 in order to narrow the possible exceptions to the prohibition of collective expulsion in times of armed conflict. The Committee had decided provisionally to adopt the paragraph, while indicating in a footnote that it was subject to review with regard to how it related to international humanitarian law.

6. The CHAIRPERSON said he took it that the Commission wished to take note of the progress report.

It was so decided.

The meeting rose at 10.15 a.m.

* Resumed from the 3006th meeting.

²⁶⁸ Yearbook ... 2006, vol. II (Part One), document A/CN.4/573.

²⁶⁹ Yearbook ... 2007, vol. II (Part Two), p. 61, para. 188 and p. 68, para. 258.

²⁷⁰ Yearbook ... 2007, vol. II (Part One), document A/CN.4/581.

²⁷¹ Yearbook ... 2008, vol. I, 2989th meeting, p. 252, para. 27.