

Document:-  
**A/CN.4/3197**

**Summary record of the 3197th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**2013, vol. I**

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**CHAPTER IV. Subsequent agreements and subsequent practice in relation to the interpretation of treaties (concluded)\***  
(A/CN.4/L.819 and Add.1–3)

**C. Text of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, as provisionally adopted by the Commission at its sixty-fifth session (concluded)\***

**2. TEXT OF THE DRAFT CONCLUSIONS AND COMMENTARIES THERETO PROVISIONALLY ADOPTED BY THE COMMISSION AT ITS SIXTY-FIFTH SESSION (concluded)\***

Document A/CN.4/L.819/Add.2

*Commentary to draft conclusion 4 (Definition of subsequent agreement and subsequent practice) (concluded)\**

Paragraph (3) (concluded)\*

72. Mr. NOLTE (Special Rapporteur) said that, in order to reconcile the views expressed by Sir Michael and Mr. Murphy, he had recast the second sentence of paragraph (3) of the commentary to read: “The term ‘in connection with the conclusion of the treaty’ should be understood as including agreements and instruments which are made in a close temporal and contextual relation with the conclusion of the treaty.”

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

*The commentary to draft conclusion 4, as a whole, as amended, was adopted.*

*Chapter IV of the report of the Commission, as amended, was adopted.*

*The meeting rose at 6.05 p.m.*

## 3197th MEETING

*Friday, 9 August 2013, at 10.05 a.m.*

*Chairperson: Mr. Bernd H. NIEHAUS*

*Present:* Mr. Caffisch, Mr. Candioti, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

**Draft report of the International Law Commission on the work of its sixty-fifth session (concluded)**

**CHAPTER VIII. Provisional application of treaties (A/CN.4/L.823)**

1. The CHAIRPERSON invited the Commission to consider, paragraph by paragraph, chapter VIII of the draft report, as contained in document A/CN.4/L.823.

\* Resumed from the 3193rd meeting.

**A. Introduction**

Paragraph 1

*Paragraph 1 was adopted.*

**B. Consideration of the topic at the present session**

Paragraphs 2 and 3

*Paragraphs 2 and 3 were adopted.*

**1. INTRODUCTION BY THE SPECIAL RAPPORTEUR OF THE FIRST REPORT**

Paragraph 4

*Paragraph 4 was adopted subject to minor editorial amendments.*

Paragraphs 5 and 6

*Paragraphs 5 and 6 were adopted.*

Paragraph 7

2. Mr. FORTEAU (Rapporteur) proposed, in the first sentence of the French text, to add the words “sur ce sujet” after “les deux rapporteurs spéciaux”.

*Paragraph 7, as amended in the French version, was adopted.*

Paragraphs 8 and 9

*Paragraphs 8 and 9 were adopted.*

**2. SUMMARY OF THE DEBATE**

Paragraph 10

*Paragraph 10 was adopted.*

Paragraph 11

3. Mr. NOLTE proposed, at the end of the final sentence, replacing the phrase “to join treaty regimes” with “to begin cooperation in accordance with a treaty”.

*Paragraph 11, as amended, was adopted.*

Paragraph 12

4. Sir Michael WOOD proposed replacing the phrase “the entry into force of” with “participation in”.

5. Mr. FORTEAU (Rapporteur) proposed, at the beginning of the final sentence, to replace the word “This” with “This clarification”.

*Paragraph 12, as amended, was adopted.*

Paragraph 13

*Paragraph 13 was adopted, subject to a minor editorial amendment.*

Paragraph 14

*Paragraph 14 was adopted.*

Paragraph 15

6. Mr. FORTEAU (Rapporteur), supported by Mr. PARK, proposed deleting the adverb “simply”, which appeared to introduce a hierarchical relationship between international customary law and general international law.

7. Sir Michael WOOD and Mr. NOLTE said that they were not sure that such a comparison was relevant in that context and would prefer to delete the phrase “or simply as rules of general international law”.

8. Mr. KITTICHAISAREE proposed, in order to resolve the problem, replacing that phrase with “or otherwise”.

*Mr. Kittichaisaree’s proposal was approved.*

*Paragraph 15, as amended, was adopted, subject to an editorial amendment.*

Paragraph 16

9. Mr. FORTEAU (Rapporteur) proposed adding the phrase “in the context of provisional application” after “the rules on interpretation of treaties”.

10. Sir Michael WOOD proposed to align the text of the paragraph as far as possible with the 1969 Vienna Convention by replacing the words “reservations to treaties regime” with “rules on reservations to treaties”, and by replacing the phrase “the provisional application regime and that on final clauses in article 24, paragraph (4), of the 1969 Vienna Convention” with “the necessary application of certain provisions of a treaty from the time of the adoption of this text (art. 24, para. 4, of the 1969 Vienna Convention)”.

*Paragraph 16, as amended, was adopted.*

Paragraphs 17 to 22

*Paragraphs 17 to 22 were adopted.*

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

#### **CHAPTER XII. Other decisions and conclusions of the Commission (A/CN.4/L.827 and Add.1)**

11. The CHAIRPERSON invited the Commission to consider, paragraph by paragraph, chapter XII of the draft report, as contained in documents A/CN.4/L.827 and Add.1.

Document A/CN.4/L.827

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

Paragraphs 1 and 2

*Paragraphs 1 and 2 were adopted.*

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

Paragraphs 3 and 4

*Paragraphs 3 and 4 were adopted.*

#### **3. CONSIDERATION OF GENERAL ASSEMBLY RESOLUTION 67/97 OF 14 DECEMBER 2012 ON THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS**

Paragraphs 5 to 11

*Paragraphs 5 to 11 were adopted.*

Paragraph 12

12. Mr. FORTEAU (Rapporteur) said that, in the last sentence, the words “and national” should be inserted before “international rule of law”.

*Paragraph 12, as amended, was adopted.*

Paragraph 13

*Paragraph 13 was adopted, subject to a minor editorial amendment.*

Paragraph 14

*Paragraph 14 was adopted.*

4. HONORARIA

Paragraph 15

*Paragraph 15 was adopted.*

5. DOCUMENTATION AND PUBLICATIONS

Paragraphs 16 to 19

*Paragraphs 16 to 19 were adopted.*

Paragraph 20

13. Sir Michael WOOD said that the text of paragraph 20 already appeared in paragraph 16.

*Paragraph 20 was deleted.*

14. Mr. PETER said that, in its report on the work of the sixty-fourth session, the Commission had expressed its gratitude to the Library of the Office of the United Nations at Geneva<sup>194</sup> and that the same should be done in the present document.

*That proposal was adopted.*

#### **6. TRUST FUND ON THE BACKLOG RELATING TO THE YEARBOOK OF THE INTERNATIONAL LAW COMMISSION**

Paragraph 21

*Paragraph 21 was adopted.*

#### **7. YEARBOOK OF THE INTERNATIONAL LAW COMMISSION**

Paragraph 22

*Paragraph 22 was adopted.*

#### **8. ASSISTANCE OF THE CODIFICATION DIVISION**

Paragraph 23

*Paragraph 23 was adopted.*

#### **9. WEBSITES**

Paragraph 24

*Paragraph 24 was adopted.*

<sup>194</sup> Yearbook ... 2012, vol. II (Part Two), para. 286.

## **B. Commemoration of the 50th anniversary of the International Law Seminar**

Paragraphs 25 to 27

*Paragraphs 25 to 27 were adopted.*

## **C. Date and place of the sixty-sixth session of the Commission**

Paragraph 28

*Paragraph 28 was adopted.*

Document A/CN.4/L.827/Add.1

## **A. Programme, procedures and working methods of the Commission and its documentation (concluded)**

### **1. INCLUSION OF NEW TOPICS ON THE PROGRAMME OF WORK OF THE COMMISSION**

Paragraph 1

15. Mr. FORTEAU (Rapporteur) said that the title in the French text should read “*Protection de l’environnement en rapport avec les conflits armés*”.

*Paragraph 1 was adopted with that amendment to the French text.*

## **D. Cooperation with other bodies**

Paragraph 2

*Paragraph 2 was adopted.*

Paragraph 3

16. Sir Michael WOOD said that, in the English text, the following sentence should be added to the end of the paragraph: “An exchange of views followed.”

*Paragraph 3 was adopted with that amendment to the English text.*

Paragraphs 4 and 5

*Paragraphs 4 and 5 were adopted.*

Paragraph 6

17. Mr. PETER said that in English, the title of the presiding officer of the African Union Commission on International Law was “Chairperson” and not “Chairman”, and that the exact spelling of his name should be checked.

*Paragraph 6 was adopted with that amendment to the English text.*

Paragraph 7

18. Mr. VALENCIA-OSPINA said that it was not necessary to indicate twice that an exchange of views had taken place and proposed deleting the final sentence.

*Paragraph 7, as amended, was adopted.*

Paragraphs 8 and 9

*Paragraphs 8 and 9 were adopted.*

Paragraph 10

19. Mr. PETER said that some facts concerning Mr. Paulo Borba Casella, such as his nationality or functions, should be added.

*That proposal was adopted.*

20. Mr. KITTICHAISAREE proposed to add that the Gilberto Amado Memorial Lecture had been followed by an “exchange of views”.

21. Mr. NOLTE said that the phrase “exchange of views” was perhaps a bit too formal and proposed to opt instead for the word “discussion”.

*Mr. Nolte’s proposal was adopted.*

*Paragraph 10, as amended, was adopted.*

Paragraphs 11 to 15

*Paragraphs 11 to 15 were adopted.*

Paragraph 16

22. Mr. FORTEAU (Rapporteur), speaking on behalf of Ms. Jacobsson (Special Rapporteur), proposed, in the first line, adding the word “brainstorming” before “session”.

*Paragraph 16, as amended, was adopted.*

Paragraphs 17 to 24

*Paragraphs 17 to 24 were adopted.*

*Chapter XII 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 sixty-fifth session (A/CN.4/L.817)**

23. The CHAIRPERSON invited the Commission to consider, paragraph by paragraph, chapter II of the draft report, as contained in document A/CN.4/L.817.

Paragraphs 1 and 2

*Paragraphs 1 and 2 were adopted.*

Paragraphs 3 and 4

24. Mr. FORTEAU (Rapporteur) said that, in the third line of paragraph 3 and the last line of paragraph 4, in the French text, the term “*réduction*” should be replaced with “*prévention*”.

*Paragraphs 3 and 4 were adopted with that amendment to the French text.*

Paragraphs 5 and 6

*Paragraphs 5 and 6 were adopted.*

Paragraph 7

25. Mr. FORTEAU (Rapporteur) said that the title of the topic in French was the following: “*Protection de l’environnement en rapport avec les conflits armés*”.

*Paragraph 7 was adopted with that amendment to the French text.*

Paragraph 8

26. Mr. KITTICHAISAREE proposed reformulating the second sentence so that it would read: “The Commission took note of the report of the Working Group, which is annexed to the Commission’s report (chap. X and annex ...).”

*Paragraph 8, as amended, was adopted.*

Paragraphs 9 to 11

*Paragraphs 9 to 11 were adopted.*

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

**CHAPTER III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.818)**

27. The CHAIRPERSON invited the Commission to consider, paragraph by paragraph, chapter III of the draft report, as contained in document A/CN.4/L.818.

**A. Immunity of State officials from foreign criminal jurisdiction**

Paragraph 1

*Paragraph 1 was adopted, subject to editorial amendments to the French text.*

**B. Formation and evidence of customary international law**

Paragraph 2

*Paragraph 2 was adopted.*

**C. Provisional application of treaties**

Paragraph 3

*Paragraph 3 was adopted.*

**D. Protection of the environment in relation to armed conflicts**

Paragraph 4

28. Sir Michael WOOD, speaking on behalf of Ms. Jacobsson (Special Rapporteur), proposed, in the introductory sentence, inserting the words “in relation” between the words “applicable” and “to”.

*Paragraph 4, as amended, was adopted.*

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

*The draft report of the International Law Commission on the work of its sixty-fifth session, as a whole, as amended, was adopted.*

**Other business**

[Agenda item 14]

29. Mr. MURASE said that, in accordance with a proposal formulated and approved in the course of informal consultations, and under the guidance of the Chairperson

of the Commission, a group of members including himself, Mr. Murphy, Mr. Nolte, Mr. Tladi, Mr. Vázquez-Bermúdez and Sir Michael Wood, had considered how to approach the Commission’s work on the topic “Protection of the atmosphere”. The outcome of those consultations had been a proposal in which he had expressed his conception of the scope of the topic.

30. The CHAIRPERSON invited Mr. Murase to read aloud his proposal concerning the scope of the new topic “Protection of the atmosphere”.

31. Mr. MURASE said that his proposal took the form of five-part understanding. First, work on the topic would proceed in a manner so as not to interfere with relevant political negotiations, including on climate change, ozone depletion and long-range transboundary air pollution. The topic would not deal with, but was also without prejudice to, questions such as liability of States and their nationals, the “polluter pays” principle, the precautionary principle, common but differentiated responsibilities and the transfer of funds and technology to developing countries, including intellectual property rights. Second, the topic would also not deal with specific substances, such as black carbon, tropospheric ozone and other dual-impact substances, which were the subject of negotiations among States. The project would not seek to fill gaps in the treaty regimes. Third, questions relating to outer space, including its delimitation, were not part of the topic. Fourth, the outcome of the work on the topic would be draft guidelines that did not seek to impose on current treaty regimes legal rules or legal principles not already contained therein. Fifth, the Special Rapporteur’s reports would be based on that understanding.

32. The CHAIRPERSON said he took it that the Commission wished to include the topic “Protection of the atmosphere” in its programme of work on the basis of the proposal that Mr. Murase just read aloud and to designate Mr. Murase as the Special Rapporteur for that subject.

*It was so decided.*

**Chairperson’s concluding remarks**

33. The CHAIRPERSON said that it had been a pleasure to chair the sixty-fifth session of the Commission and thanked all the members for their contributions. He also thanked the Secretariat for its steadfast and efficient assistance and the conference services staff members, including the interpreters and précis-writers, for their co-operation and assistance.

**Closure of the session**

34. After the customary exchange of courtesies, the CHAIRPERSON declared the sixty-fifth session of the International Law Commission closed.

*The meeting rose at 11.30 a.m.*