

Document:-  
**A/CN.4/SR.2518**

**Summary record of the 2518th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
**1997, vol. I**

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tions did not have such competence . . .”. Was it to be inferred that the monitoring bodies of regional conventions did have such competence?

57. Mr. ROSENSTOCK said that he shared the uncertainty expressed by Mr. Operti Badan. To remove any ambiguity, he proposed that the words “whatever might be the case at the regional level,” should be inserted before the words “the bodies monitoring”.

*Paragraph 92, as amended, was adopted.*

Paragraph 93

58. Mr. SIMMA proposed that the word “machinery”, at the beginning of the second sentence, should be replaced by “regime”.

*Paragraph 93, as amended, was adopted.*

Paragraphs 94 to 104

*Paragraphs 94 to 104 were adopted.*

Paragraph 105

59. Mr. FERRARI BRAVO said the paragraph did not give an accurate account of the Commission’s debate, for the Commission had had before it not only a draft resolution but also preliminary draft conclusions. Contrary to what was said in the second sentence, the Commission had decided not to adopt a draft resolution. Moreover, that could be seen from paragraph 105 *bis*.

60. The CHAIRMAN suggested that the second sentence of paragraph 105 should be deleted.

*It was so agreed.*

61. Mr. ROSENSTOCK said that it was a draft resolution that had first been submitted to the Commission. As clearly stated in the first sentence of paragraph 105, the Commission had decided to transmit it to the Drafting Committee without having taken a final decision as to the form of the text. It was the Drafting Committee itself that had submitted preliminary draft conclusions to the Commission, without the Drafting Committee itself having indicated what final form the Commission should give to the text.

62. Mr. PELLET (Special Rapporteur) and Mr. GALICKI (Rapporteur), confirmed that recollection of events. In their opinion, the first sentence of paragraph 105 should be kept as it stood.

*Paragraph 105, as amended, was adopted.*

Paragraphs 105 *bis* and 106

*Paragraphs 105 bis and 106 were adopted.*

Paragraph 107

63. Mr. RODRÍGUEZ CEDEÑO proposed that it should be explained in the first sentence that it was not the

“principle stated in paragraph 5” but the “principle expressed in paragraph 5 of the preliminary conclusions”, as the wording ultimately adopted for the paragraph was different from that which had been proposed by the Special Rapporteur.

*It was so agreed.*

64. Mr. RODRÍGUEZ CEDEÑO, reverting to the first sentence, said he thought it incorrect to say that the monitoring bodies established by treaties were competent to make comments and express recommendations. The proper formula would be “are competent to adopt decisions”.

65. Mr. PELLET (Special Rapporteur) pointed out that the sentence started with the words “Some members”, who had actually expressed that opinion.

66. Mr. SIMMA said that paragraph 107 seemed to contradict the preceding paragraph. The positions of members reflected in the two paragraphs were confused.

67. The CHAIRMAN suggested that consideration of paragraph 107 should be taken up at the next meeting.

*It was so agreed.*

*The meeting rose at 6.20 p.m.*

## 2518th MEETING

*Friday, 18 July 1997, at 10 a.m.*

*Chairman:* Mr. João Clemente BAENA SOARES

later: Mr. Alain PELLET

*Present:* Mr. Addo, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Dugard, Mr. Economides, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kateka, Mr. Lukashuk, Mr. Mikulka, Mr. Operti Badan, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Thiam.

### Draft report of the Commission on the work of its forty-ninth session (concluded)

CHAPTER V. *Reservations to treaties (concluded)* (A/CN.4/L.544 and Add.1 and 2 and Add.2/Corr.1)

**B. Consideration of the topic at the present session (concluded)**  
(A/CN.4/L.544 and Add.1)

Paragraph 107 (concluded)

I. Mr. RODRÍGUEZ CEDEÑO, following a conversation with the secretariat, withdrew his proposed amendment to paragraph 107.

*Paragraph 107 was adopted.*

Paragraphs 108 to 113

*Paragraphs 108 to 113 were adopted.*

*Section B, as amended, was adopted.*

**C. Texts of the preliminary conclusions of the International Law Commission on reservations to normative multilateral treaties including human rights treaties adopted by the Commission**  
(A/CN.4/L.544/Add.2 and Add.2/Corr.1)

*Section C was adopted.*

*Chapter V, as a whole, as amended, was adopted.*

*Mr. Pellet took the Chair.*

**CHAPTER X. Other decisions and conclusions of the Commission**  
(A/CN.4/L.550)

2. Mr. BAENA SOARES (Chairman of the Planning Group) introduced the report of the Planning Group (A/CN.4/L.551), which also appeared in chapter X, section A, of the draft report of the Commission. The most-discussed topic had been the proposal for a split session in 1998, on an experimental basis. The Planning Group had also discussed the idea of returning to 12-week sessions and had considered criteria for the selection of topics for the long-term programme of work. The first week of the next session would be given over almost entirely to working groups, with a two-day seminar to celebrate the Commission's fiftieth anniversary. The report of the Planning Group also included a schedule for the consideration of topics for the period 1998-2001.

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

Paragraphs 1 and 2

*Paragraphs 1 and 2 were adopted.*

**1. PLANNING OF THE WORK OF THE CURRENT SESSION**

Paragraph 3

*Paragraph 3 was adopted.*

**2. WORK PROGRAMME OF THE COMMISSION FOR THE REMAINDER OF THE QUINQUENNIAL**

Paragraph 4

*Paragraph 4 was adopted.*

**3. METHODS OF WORK**

Paragraph 5

*Paragraph 5 was adopted.*

Paragraph 6

3. Mr. BENNOUNA said that the Commission had always practised rotation of the chairmanship by geographical region. What was meant by the proposal in paragraph 6 to adjust that practice?

4. Mr. BAENA SOARES (Chairman of the Planning Group) said current practice was to rotate the chairmanship every five years in the same order, which meant that the same region held the chairmanship in the first year of each quinquennium. The idea of changing that practice was being advanced, but no decision had been taken. The evident difficulties in adapting the practice would require much more analysis and consideration.

5. Mr. ROSENSTOCK said it had been suggested that the rotation should itself be rotated, so that each region would get a chance in due course to chair the first and the last sessions of the quinquennium, which were critical in mapping out and in completing the Commission's work.

6. Mr. PAMBOU-TCHIVOUNDA asked what was accomplished by chairing the first or the last session. No problem had arisen with the rotation system so far and one should not be created by including paragraphs 6 and 7 in the report.

7. Mr. GALICKI (Rapporteur) suggested that the end of the first sentence of paragraph 6 should be changed from "the quinquennia" to "each quinquennium".

8. Mr. BENNOUNA said it was not appropriate in paragraph 6 to speak of "general support".

9. Mr. LUKASHUK proposed that the last sentence of that paragraph should read "This suggestion was supported and deserves further discussion".

10. Mr. THIAM said he was opposed to the proposal contained in paragraph 6. The current system of rotation of the chairmanship had never created any difficulties.

11. Mr. GOCO said no attempt was being made to modify existing practice, and yet the wording suggested that there should be an adjustment. The word "flexibility" was wrong. Instead of saying that the currently fixed sequence should be "adjusted", it should be "followed". The phrase "a way should . . . be found" should be deleted. As to paragraph 7, the idea had been to decide on the chairmanship at the end of each session, so as to allow the new Chairman adequate time to prepare for the next session.

12. The CHAIRMAN said a proposal had been made in the Planning Group to put an end to the fixed sequence of rotation and had not met with any strong objections.

13. Mr. ROSENSTOCK said he agreed with the Chairman that there had been no objections to the proposal. The last part of the last sentence of paragraph 6 should simply

state that there was an intention to consider the matter further.

14. The CHAIRMAN, speaking as a member of the Commission, said that, he was opposed to anything that would make for greater regionalization of the Commission. Speaking as Chairman, he said that, if he heard no objection, he would take it that the Commission agreed to adopt paragraph 6, on the understanding that in the first sentence, “the quinquennia” would be replaced by “each quinquennium”, and in the second sentence the phrase “a way . . . practice” would be replaced by a statement consistent with the formulation proposed by Mr. Lukashuk.

*It was so agreed.*

*Paragraph 6, as amended, was adopted.*

#### Paragraph 7

15. Mr. BENNOUNA said he had strongly supported the idea contained in paragraph 7. A 10- or 12-week session demanded a great deal of preparation for the Chairman. The Commission should proceed to adopt it and state that it enlisted unanimous support.

16. The CHAIRMAN said that there had not been unanimous support in that regard in the Planning Group.

17. Mr. SIMMA said he agreed with Mr. Bennouna. The Commission should adopt the principle embodied in paragraph 7. Being more explicit on the matter would help Commission and Bureau members to prepare for the tasks ahead, such as chairing the Drafting Committee.

18. Mr. CANDIOTI said he agreed with the principle, as long as such a phrase as “where possible” was added, because, while it would be easy to observe in the second, third, fourth and fifth years of each quinquennium, it would be difficult the first year, as the General Assembly’s decision on the composition of the Commission’s membership could not be anticipated.

19. Mr. PAMBOU-TCHIVOUNDA said Mr. Candiotti’s point was very clear, but was the matter not a regional one? Each region’s designation of who would hold the chairmanship required coordination among all members from that region. The Commission should keep its feet on the ground.

20. Mr. THIAM asked how the Commission could be sure that the person designated as Chairman would still be available at the next session. He did not agree that a Chairman needed 12 months to prepare for office. As the existing system had never raised any problems, he saw no reason to change it.

21. Mr. LUKASHUK said he fully supported the proposal in paragraph 7. Its opponents should view it as an experiment which could be reversed if it failed to work. The change, however, would be unfair to the current Chairman. No sooner was one Chairman elected than the Commission started looking around for another. However, he trusted that Mr. Pellet would accept the situation with his usual composure.

22. Mr. SIMMA drew attention to the practical advantages to be gained from adopting the principle embodied in paragraph 7. The admirable way in which the current Chairman of the Drafting Committee had discharged his duties had led him (Mr. Simma) to consider standing for that office at the next session. As it was to be a split session, he would be able to organize his other commitments in such a way as to allow him to serve. He would be unable to do so, however, in the event of a return to unitary sessions.

23. Mr. GOCO said a sentence could be added similar to that inserted in paragraph 6 about the need for further consideration of the suggestion. It would obviously be impracticable to introduce such an innovation on the last day of the current session. It should also be borne in mind that the serving Chairman normally participated in the proceedings of the Sixth Committee of the General Assembly and that the change of Chairman hinged on the rotation system provided for in paragraph 6.

24. The CHAIRMAN said that Mr. Bennouna’s idea was not, as he saw it, to designate a new Chairman right away but rather to give the suggestion in paragraph 7 the status of a decision.

25. Mr. THIAM said that if the African Group was asked to designate a Chairman at that stage in the proceedings, it would be unable to do so. The office of Chairman was not so exacting as to require a long period of preparation. At all events, more time was needed for reflection and it would be unwise to take a hasty decision.

26. The CHAIRMAN said that he had personally found the chairmanship quite a demanding office. The incumbent must be prepared to devote himself single-mindedly to the task for the entire session.

27. Speaking as a member of the Commission, he said he was opposed to the proposal in paragraph 7. The existing system seemed to work quite well. The members knew in advance who was likely to be the next Chairman. There was scope for flexibility, since an alternative candidate could be found if the designated Chairman found he had other commitments. The proposed new system was, in his view, unduly rigid. For example, he would have been unable to offer his services as Chairman a year ago, since he was never sure of his schedule at ICJ until the last minute. The existing system struck a fairly satisfactory balance between predictability and flexibility. Mr. Pambou-Tchivounda had been right, moreover, to draw attention to the difficulty that would arise in the first year of the quinquennium.

28. It was far more important, in his opinion, to change the mode of election from the existing system of total renewal every five years to partial renewal, say every three years, in order to preserve continuity. He would suggest such a reform at the next session. It was also the only way that Mr. Pambou-Tchivounda’s objection might be addressed.

29. On the other hand, Mr. Simma was right to draw attention to the important role played by the Chairman of the Drafting Committee. Mr. Sreenivasa Rao, moreover, had been extremely reluctant to accept the office. For his own part, he was inclined to support the idea of holding

informal consultations at the end of a session on an appropriate and willing candidate. It had always been a personal appointment without provision for geographical rotation. In that connection, he paid tribute to Mr. Calero Rodrigues who had in the past been something of a "life Chairman" of the Drafting Committee.

30. He suggested deleting the word *notamment* in the French version and "generally" in the English version of paragraph 7 and adding the words "and the Chairman of the Drafting Committee" after the word "Chairman".

31. Mr. BENNOUNA said that he disagreed with the Chairman and continued to view the proposal in paragraph 7 as a good idea. The designation of officers need not be official, but the coordinators of the regional groups should reach some kind of understanding through informal consultations on the distribution of work. It was untrue to say that elections had never been contested in the Commission. The atmosphere had not always been harmonious.

32. Mr. THIAM said he agreed with the wording suggested by the Chairman, but insisted that no decision should be taken for the time being on the membership of the Bureau. Consultations were fine, however, and could be undertaken at any time.

33. The CHAIRMAN assured Mr. Thiam that there was no question of taking any decision.

34. Mr. PAMBOU-TCHIVOUNDA asked whether Mr. Goco's proposed reference to further consideration of the matter was to be inserted.

35. Mr. GOCO proposed the insertion of the following second sentence: "This suggestion will be subject to further consideration by the Commission at the next session." The implication was that the suggestion was considered valid but impracticable for the time being. Final approval of the matter was being deferred until the next session.

36. Mr. THIAM said he did not agree that the suggestion had been considered valid.

37. The CHAIRMAN noted that the proposed wording of the new sentence was non-committal. He said that, if he heard no objection, he would take it that the Commission agreed to adopt paragraph 7, as amended, including the proposed new sentence by Mr. Goco.

*It was so agreed.*

*Paragraph 7, as amended, was adopted.*

#### 4. SPLIT SESSION FOR 1998

##### Paragraph 8

*Paragraph 8 was adopted.*

##### Paragraph 9

38. Mr. HAFNER proposed replacing "suggested" by "noted" in the last sentence of paragraph 9.

*It was so agreed.*

*Paragraph 9, as amended, was adopted.*

##### Paragraph 10

39. Mr. BENNOUNA said he failed to understand the second half of paragraph 10. What were the "appropriate arrangements" to be made by the Secretariat so as not to prejudge the outcome of the split-session experiment?

40. Mr. BAENA SOARES (Chairman of the Planning Group) said the problem was related to the organization of conference services within the United Nations. The idea that had been discussed at length was that the situation with respect to conference services should not influence the outcome of the split-session experiment. As budgets were adopted on a biennial basis, provision should be made at the beginning of the biennium for planned meetings.

41. Mr. BENNOUNA said he interpreted paragraph 10 as meaning that the Secretariat was to make appropriate arrangements to ensure that the problems and difficulties which the Commission expected to encounter in 1998 were not repeated.

42. Mr. LEE (Secretary to the Commission) said that the Secretariat's understanding of paragraph 10, in the light of paragraph 11 concerning the Commission's sessions in 1998 and 1999, was that the Secretariat would contact the competent body in the United Nations and request that contingency plans should be made so that the Secretariat had maximum flexibility after the split-session experiment and was able to provide the Commission with the requisite conference services, whatever decision it took.

43. Mr. GALICKI (Rapporteur) said that it was obviously in the Commission's interest to have paragraph 10 included in the report and interpreted by the Secretariat in the way suggested by the Secretary.

44. Mr. PAMBOU-TCHIVOUNDA asked whether the Secretariat had any choice in the matter. Was it likely to do anything that might run counter to the Commission's interests or cause an obstruction? He wondered whether paragraph 10 served any purpose in that case. The Secretariat only did what it had to do.

45. The CHAIRMAN said Mr. Pambou-Tchivounda might think differently if he had been involved in the practicalities of arranging for the allocation of conference services.

46. Mr. ROSENSTOCK said that the secretariat's response corresponded precisely to the thinking behind paragraph 10. The Commission would be free after the split-session experiment to make its choice on the merits and would not be constrained by decisions such as that regarding the dates of the Diplomatic Conference on the Establishment of an International Criminal Court, in 1998, which had in a certain sense been taken without consideration of the Commission's interests.

47. Mr. BENNOUNA thanked the Secretary to the Commission for his explanation and regretted that paragraph 10 was not equally clear. He could, however, support it in substance.

48. Mr. BAENA SOARES (Chairman of the Planning Group) said that paragraph 10 was a preventive measure to allow the Commission as much latitude as possible in taking its decision on the split-session experiment and to ensure that it was not hampered by prior administrative decisions.

49. Mr. BENNOUNA said that the Commission should review the position next year in the light of the results of the split-session experiment.

50. The CHAIRMAN, speaking as a member of the Commission, said that he disagreed with the position adopted by the Planning Group and thought that the principle of a 12-week session should not be regarded as sacrosanct. However, he realized that he had been a minority in the Planning Group.

*Paragraph 10 was adopted.*

#### 5. DURATION OF THE COMMISSION'S FUTURE SESSIONS

##### Paragraph 11

*Paragraph 11 was adopted.*

#### 6. CELEBRATION OF THE FIFTIETH ANNIVERSARY OF THE COMMISSION IN 1998

##### Paragraph 12

51. Mr. BENNOUNA asked whether the seminar to celebrate the fiftieth anniversary of the Commission, referred to in the second sentence of paragraph 12, ought not to have some specific title.

52. The CHAIRMAN explained that it had been considered prudent not to specify the precise orientation of the projected seminar. He suggested that the words "to collaborate with the Commission in organizing", in the third sentence, should be replaced by "to organize jointly with the Commission".

*It was so agreed.*

*Paragraph 12, as amended, was adopted.*

##### Paragraph 13

*Paragraph 13 was adopted.*

#### 7. COOPERATION WITH OTHER BODIES

##### Paragraphs 14 and 15

*Paragraphs 14 and 15 were adopted.*

#### 8. ORGANIZATION OF THE FIFTIETH SESSION

##### Paragraph 16

53. The CHAIRMAN said that the word "suggested" in the first sentence should be replaced by "arranged".

*It was so agreed.*

*Paragraph 16, as amended, was adopted.*

#### WORK PROGRAMME (1998-2001)

54. Mr. BENNOUNA suggested that, in the interests of harmonization, the second sentence of the 1998 entry under "Unilateral acts of States" should be deleted. Keeping it could be viewed as signifying that the Special Rapporteurs on other topics would not be assisted by small consultative groups of members of the Commission. As to the 2001 entry under "Diplomatic protection", the words "Fourth report of the Special Rapporteur and" should be inserted before "Possible completion of the first reading of the topic". He would not insist on the second report being described as preliminary, provided it was understood that its precise contents would depend on future developments.

*It was so agreed.*

55. Mr. HAFNER said that the reference under the 1998 entry for Unilateral acts of States to a small consultative group should be included for all the new topics. Again, the sentence in square brackets in the 1999 entry under "International liability" should be inserted in the corresponding entries for the years 2000 and 2001.

*It was so agreed.*

56. The CHAIRMAN said that the 1998 entry under "Reservations to treaties" should begin with the words "To the extent possible,". As to the 2001 entry under the same topic, he suggested that the word "completion" should be preceded by the word "Possible".

*It was so agreed.*

57. Mr. SIMMA congratulated the secretariat on preparing the work programme for the rest of the quinquennium, a welcome innovation which offered a better overview of the Commission's future activities. Any failure to carry out the programme in time would, of course, be more transparent than in the past, but that too was perhaps to be welcomed.

*Section A, as amended, was adopted.*

#### B. Appointment of special rapporteurs

##### Paragraphs 17 to 19

*Paragraphs 17 to 19 were adopted.*

##### Paragraph 20

58. The CHAIRMAN invited the Special Rapporteurs to indicate the membership of the respective consultative groups they had formed in accordance with paragraph 20.

59. Mr. MIKULKA said that the consultative group on nationality in relation to State succession would consist of Mr. Addo, Mr. Al-Baharna, Mr. Candioti, Mr. Economides, Mr. Galicki, Mr. Hafner and Mr. Rosenstock. He had taken the liberty of exceeding the maximum membership of five members indicated by the Chairman because he had thought it desirable that, in addition to members who had already worked on the topic in the past, the group should also include representatives of different legal systems and of the main currents of opinion.

60. The CHAIRMAN said it was desirable to remain within the limits of three to five members. The regional aspect was, perhaps, not so important in the context.

61. Mr. BENNOUNA said that the consultative group on diplomatic protection would be composed of Mr. Dugard, Mr. Galicki, Mr. Sepúlveda and Mr. Simma.

62. Mr. RODRÍGUEZ CEDEÑO said that the consultative group on unilateral acts of States would be composed of Mr. Dugard, Mr. Economides, Mr. Ferrari Bravo, Mr. Hafner, Mr. Lukashuk, Mr. Pambou-Tchivounda and Mr. Rosenstock.

63. Mr. Sreenivasa RAO said that the consultative group on international liability for injurious consequences arising out of acts not prohibited by international law would be composed of Mr. Galicki, Mr. Hafner, Mr. Kateka and Mr. Operti Badan. In addition, he had already received a great deal of cooperation from other members of the Commission.

64. The CHAIRMAN said that the working group on State responsibility would be formed afresh every year to deal with the separate subjects of crimes, countermeasures and settlement of disputes. The working group for the next session, which would be somewhat larger than those for other topics, would be set up at the beginning of the session. Mr. Dugard and Mr. Ferrari Bravo had already expressed an interest in joining it.

65. Mr. FERRARI BRAVO, noting that he had been listed among the members of the consultative group on unilateral acts of States, wished to place on record that he had not volunteered to join that consultative group, which in his opinion was already too large and which included another western European representative in the person of Mr. Economides. On the other hand, he was definitely interested in joining the working group on State responsibility.

66. Mr. DUGARD, agreeing that the consultative group on unilateral acts of States was rather large, said that he would prefer to withdraw from its membership, as he was already a member of the consultative group on diplomatic protection.

67. Mr. BENNOUNA said that, since the establishment of consultative groups constituted an innovation, a good deal of flexibility was called for. Members who did not formally belong to a consultative group but felt that they could make a valuable contribution would be welcome to do so at all times.

68. Mr. HAFNER said he agreed with Mr. Bennouna. Although not formally a member of the consultative group on unilateral acts of States, he would be interested in participating in its work from time to time.

69. Mr. ECONOMIDES proposed that a sentence expressing the view put forward by Mr. Bennouna should be added at the end of paragraph 20.

70. The CHAIRMAN suggested that paragraph 20 should read as follows:

“20. The Special Rapporteurs were invited to form, as the case may be, their respective consultative groups. The membership of these consultative groups was announced at the 2518th meeting on 18 July.

Nevertheless, it was stressed that all members of the Commission were invited to cooperate with the Special Rapporteurs.”

*It was so agreed.*

*Paragraph 20, as amended, was adopted.*

*Section B, as amended, was adopted.*

#### C. Long-term programme of work

Paragraph 21

*Paragraph 21 was adopted.*

*Section C was adopted.*

#### D. Cooperation with other bodies

Paragraphs 22 to 26

71. Mr. GALICKI (Rapporteur) indicated that some of the dates in paragraphs 22, 23 and 24 were wrong and would be corrected later.

72. The CHAIRMAN proposed that the last sentence of paragraph 25 should, in the interests of greater courtesy towards ICJ, begin with the words “The Commission found it useful”. In paragraph 26, the words “the representative” should be replaced by “a member of the legal service”.

*Paragraphs 22 to 26, as amended, were adopted.*

*Section D, as amended, was adopted.*

#### E. Date and place of the fiftieth session

Paragraph 27

73. Mr. GALICKI (Rapporteur) said that at the beginning of paragraph 27 the words “On the basis of those external factors mentioned above” should read: “In view of the external factors mentioned in paragraph 9”.

*It was so agreed.*

*Paragraph 27, as amended, was adopted.*

*Section E, as amended, was adopted.*

#### F. Representation at the fifty-second session of the General Assembly

Paragraph 28

74. Mr. GALICKI (Rapporteur) drew attention to a minor editing change in footnote 4.

*Paragraph 28 was adopted.*

*Section F was adopted.*

#### G. Contribution to the Decade of International Law

Paragraph 29

*Paragraph 29 was adopted.*

*Section G was adopted.*

#### H. International Law Seminar

Paragraphs 30 to 32

*Paragraphs 30 to 32 were adopted.*

Paragraph 33

75. The CHAIRMAN and Mr. GOCO drew attention to editing changes required in paragraph 33 in connection with the titles of the lectures they had given in the Seminar.

*It was so agreed.*

*Paragraph 33, as amended, was adopted.*

Paragraphs 34 to 41

76. Mr. GALICKI (Rapporteur) suggested that the word “comprehensive”, in paragraph 41, should be replaced by “full”.

*Paragraphs 34 to 41 were adopted.*

*Section H, as amended, was adopted.*

*Chapter X, as a whole, as amended, was adopted.*

77. Mr. HAFNER said that the report of the Secretary-General entitled “Renewing the United Nations: a programme for reform”<sup>1</sup> covered a very wide field of activities, yet conspicuously absent was a reference to United Nations activities in the codification and progressive development of international law. International law was an important device for guaranteeing and securing peace and stability in international relations. He deeply regretted that it had been omitted from the report. The omission was all the more surprising since the second half of the United Nations Decade of International Law,<sup>2</sup> was currently under way, and preparations were to be made for the fiftieth anniversary of the Commission. He therefore suggested that the Chairman draw that omission to the attention of Mr. Hans Corell, Under-Secretary-General for Legal Affairs, the Legal Counsel.

78. The CHAIRMAN said that he, too, had found the omission disturbing. He undertook to raise the matter with the Legal Counsel and, if he had the opportunity, with the Secretary-General.

#### CHAPTER VI. *State responsibility* (A/CN.4/L.541)

*Chapter VI was adopted.*

#### CHAPTER VII. *International liability for injurious consequences arising out of acts not prohibited by international law* (A/CN.4/L.542)

*Chapter VII was adopted.*

#### CHAPTER VIII. *Diplomatic protection* (A/CN.4/L.548)

*Chapter VIII was adopted.*

#### CHAPTER IX. *Unilateral acts of States* (A/CN.4/L.549)

*Chapter IX was adopted.*

#### CHAPTER I. *Organization of the session* (A/CN.4/L.545 and Corr.1)

##### A. Membership

##### B. Officers and the Enlarged Bureau

##### C. Drafting Committee

##### D. Working groups

##### E. Secretariat

Paragraphs 1 to 12

*Paragraphs 1 to 12 were adopted.*

*Sections A to E were adopted.*

##### F. Agenda

Paragraph 13

79. The CHAIRMAN suggested that, after item 5, two new items should be inserted to read:

“6. Diplomatic protection

“7. Unilateral acts of States.”

*It was so agreed.*

*Paragraph 13, as amended, was adopted.*

*Section F, as amended, was adopted.*

*Chapter I, as a whole, as amended, was adopted.*

#### CHAPTER II. *Summary of the work of the Commission at its forty-ninth session* (A/CN.4/L.546)

*Chapter II was adopted.*

#### CHAPTER III. *Specific issues on which comments would be of particular interest to the Commission* (A/CN.4/L.547)

80. The CHAIRMAN noted that the chapter was an innovation introduced in response to one of the recommendations made in the report of the Commission on the work of its forty-eighth session.<sup>3</sup> It was intended to draw attention to the issues on which the Commission would like to hear the reactions of the General Assembly through the Sixth Committee.

81. Mr. GALICKI (Rapporteur) added that a section on specific issues had been included in chapter I of the report of the Commission on the work of its forty-eighth session, but it had currently been decided to place such material in a separate chapter, to make it more conspicuous. The

<sup>1</sup> A/51/950.

<sup>2</sup> See 2491st meeting, footnote 6.

<sup>3</sup> *Yearbook . . . 1996*, vol. II (Part Two), para. 148 (c).



issues were drawn from reports received from working groups and from consultations with the Chairmen of the working groups and the Special Rapporteurs.

82. Mr. BENNOUNA proposed that, in section (e) on diplomatic protection, subsection (b) should be deleted.

*It was so agreed.*

83. Mr. ROSENSTOCK proposed that, as a consequence of that amendment, the word "claimed", in section (e), subsection (c), should be deleted, as it might otherwise be ambiguous and suggest that the Commission did not think international organizations provided diplomatic protection for their agents.

*It was so agreed.*

84. Mr. RODRÍGUEZ CEDEÑO proposed that, at the end of the last paragraph, the words "and the Consultative Group" should be deleted.

*It was so agreed.*

*Chapter III, as a whole, as amended, was adopted.*

*The draft report of the Commission on the work of its forty-ninth session, as a whole, as amended, was adopted.*

### Closure of the session

85. The CHAIRMAN said he wished to share some of his thoughts on the session that was at that time coming to an end. He could not honestly state that it saddened him: being Chairman had been a harder job than he had ever expected it to be. Yet he was sure that nostalgia would set in at some point in the future, for the Commission, by entrusting him with its chairmanship, had offered him a unique and enriching experience for which he was truly grateful.

86. He had said at the start of his tenure as Chairman that he found the members of the Commission intrepid, and he was even more convinced of that now. To begin with, they had put up with him—something that was not always easy—and he was grateful to them for accepting him, defects and all. It was that very acceptance that had enabled him to act on his sincere devotion to the institution they all served. He truly believed in international law and that the Commission could help to promote it. By performing the duties assigned to him by the Commission, he felt he had been able to contribute to that effort. If, at times, he had acted impatiently or tactlessly he sincerely begged forgiveness.

87. He had initially feared that the session would be mainly about the Commission's getting into its stride after the replacement of over half of its membership, nor had the agenda, which had not seemed very ambitious, encouraged optimism. Yet he had been pleasantly surprised to see that those predictions had proved false, and that the session had truly been a fruitful one.

88. Those results could not have been accomplished without the remarkable efforts of those who worked behind the scenes. Mr. Lee, the Secretary to the Commission, had been an outstanding adviser and was one of the

main artisans of the session's success. All the other members of the secretariat had likewise won his admiration for their excellence and perseverance in performing their tasks and, on behalf of the Commission, he wished to thank all of them.

89. The new members of the Commission had adapted rapidly to the Commission's working methods and offered a fresh outlook on them. The long-standing members, too, had made their contribution by countenancing a number of innovations. Those attitudes had enabled the Commission to move forward. The Chairmen of the working groups had put perennial topics back on track towards completion and given a good start to the work on new topics. The members of the Enlarged Bureau, the Rapporteur and the Chairman of the Drafting Committee had won his gratitude and admiration. He also wished to pay special tribute to the Special Rapporteur on nationality in relation to the succession of States, whose topic had formed the bulk of the Commission's work at the current session. His enthusiasm for the topic and his energy had illuminated what was in essence a fairly austere subject. The results were, he believed, without precedent in the work of the Commission: the adoption, in the course of a single session, of an entire set of draft articles, with commentaries. The session had also yielded preliminary conclusions on reservations, fresh impetus had been given to the work on two long-standing topics, and the work on two new topics had been planned. The results of the session were certainly nothing to be ashamed of.

90. A few words should be said about traditions, which came in both the good and the bad varieties. He remained adamant that points of order had to be used parsimoniously and only to further the proceedings, not to interrupt them. He also remained convinced that independent experts like the members of the Commission should not have to hew to the line set by international civil servants who insisted on the rigorous observance of precedent, for example, in the presentation of the report. Members of the Commission not able to attend all of its meetings should exercise restraint by not speaking in ignorance of past discussion and thereby obliging the Commission to go back over terrain it had already covered. They could indicate briefly what their position would have been had they been present, they could express reservations, but they should not reopen the discussion.

91. It was gratifying, on the other hand, to see that the debates had taken a less formalistic turn, that they had been more relaxed and more direct, and he hoped that that new approach would be followed at the next session. He also hoped members would still continue to say what was truly on their minds concerning international law and its codification and progressive development, without unduly concerning themselves with the reactions of the Governments of their own countries or with the possible electoral consequences of their positions. A dialogue between the Commission and the community of States within the General Assembly was indispensable. The Commission was at the service of the international community, and it was by striving to develop the best possible rules of international law that it could best serve that community. However, the members of the Commission must remain modest. They were experts, but not legislators, and it was Governments that would decide in the end on the

fate of the rules they developed. On the whole, he thought an excellent balance prevailed.

92. He had had the honour of serving on the Commission during two other mandates previously, and the membership had been remarkable in both instances, notwithstanding the doctrinal disputes, cultural differences and ideological oppositions within it. The current membership was fully in keeping with that honourable tradition.

93. Mr. MIKULKA, speaking on behalf of the Commission, thanked the Chairman for his brilliant conduct of the Commission's proceedings. He had instituted a revolution

in its working methods which constituted a splendid contribution to the Commission's work.

94. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) thanked the Chairman for the excellent guidance given for the work of the Drafting Committee and paid tribute to the members of the Drafting Committee, and to the entire Commission, for having advanced so far on so many important fronts. He was happy to have been part of that endeavour.

95. After the usual exchange of courtesies, the CHAIRMAN declared the forty-ninth session of the International Law Commission closed.

*The meeting rose at 1.05 p.m.*