

Document:-  
**A/CN.4/SR.2564**

**Summary record of the 2564th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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*Commentary to article 12 (A/CN.4/L.554/Add.1 and Add.1/Corr.1 and 2)*

86. Mr. Sreenivasa RAO (Special Rapporteur) recalled that there had been substantial discussion of the article, with a reprioritization and reordering of subparagraphs. He drew attention to the additional text contained in documents A/CN.4/L.554/Add.1/Corr.1 and 2, which reflected the discussions at the 2561st meeting and in the Drafting Committee.

*The commentary to article 12, as amended, was adopted.*

### Tribute to the Secretary to the Commission

87. The CHAIRMAN read out the following draft resolution:

*“The International Law Commission,*

*“Acknowledging the important contribution made by Mr. Roy Lee to the work of the International Law Commission and to the codification and the progress in the development of international law,*

*“1. Expresses its gratitude to him for the friendly and efficient manner in which he has guided and assisted the International Law Commission;*

*“2. Extends its very best wishes to him on the occasion of his retirement.”*

*The draft resolution was adopted.*

*The meeting rose at 1.10 p.m.*

## 2564th MEETING

*Friday, 14 August 1998, at 3.15 p.m.*

*Chairman: Mr. João BAENA SOARES*

*Present: Mr. Bennouna, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Galicki, Mr. Goco, Mr. Illueca, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Simma, Mr. Yamada.*

### Draft report of the Commission on the work of its fiftieth session (concluded)

CHAPTER VI. *International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) (concluded) (A/CN.4/L.554 and Corr.1 and 2 and Add.1 and Add.1/Corr.1 and 2 and Add.2 and Add.2/Corr.1)*

C. *Text of the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law (Prevention of transboundary damage for hazardous activities) provisionally adopted by the Commission on first reading (concluded) (A/CN.4/L.554/Add.1 and Add.1/Corr.1 and 2 and Add.2 and Add.2/Corr.1)*

2. *TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO (concluded)*

*Commentary to article 8 (concluded) (A/CN.4/L.554/Add.1)*

1. Mr. Sreenivasa RAO (Special Rapporteur), taking into account the concerns expressed by some members (2563rd meeting), proposed that the following sentence should be inserted after the first sentence of paragraph (6) of the commentary to article 8: “Some members, however, felt that it was desirable and necessary that the draft articles should have elaborated on the elements of the environment impact assessment for the guidance of States.”

*The commentary to article 8, as amended, was adopted.*

*Commentary to article 13 (A/CN.4/L.554/Add.2)*

2. Mr. Sreenivasa RAO (Special Rapporteur) explained that article 13 of the draft at the forty-eighth session<sup>1</sup> had been amended. The commentary summarized the discussions that had led to those changes. It should also be specified in the commentary that the phrase “within a reasonable time” had the same connotation in article 13, paragraph 2, as in article 10, paragraph 2.

*The commentary to article 13 was adopted.*

*Commentary to article 14*

*The commentary to article 14 was adopted.*

*Commentary to article 15*

3. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the last sentence of paragraph (3) of the commentary to article 15 should be reformulated as follows: “Article 15 essentially encourages and relies on the good faith cooperation of the parties.”

*The commentary to article 15, as amended, was adopted.*

*Commentary to article 16*

*The commentary to article 16 was adopted.*

<sup>1</sup> See 2527th meeting, footnote 16.

*Commentary to article 17 (A/CN.4/L.554/Add.2 and Add.2/Corr.1)*

4. Mr. Sreenivasa RAO (Special Rapporteur) recalled that article 17 had been subjected to fairly lengthy consideration by the Commission, which had led to the proposed amendments to paragraphs (9) and (10) of the commentary contained in document A/CN.4/L.554/Add.2/Corr.1.

5. Mr. ROSENSTOCK questioned whether the proposed amendment to paragraph (10) of the commentary might not raise doubts concerning the compulsory character of the procedure set out in the article.

6. Mr. GALICKI noted that paragraph (3) of the commentary to article 17 outlined a range of dispute settlement methods that was broader than that contained in paragraph 1 of the article.

7. Mr. SIMMA proposed that paragraph (3) of the commentary should be brought into line with paragraph 1 of the article by deleting the reference, in the English version, to “good offices” in the first-mentioned paragraph.

*The commentary to article 17, as amended, was adopted.*

*Section C.2, as amended, was adopted.*

1. TEXT OF THE DRAFT ARTICLES (A/CN.4/L.554/Add.1)

8. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to adopt the text of the draft articles.

*It was so agreed.*

*Section C.1 was adopted.*

**B. Consideration of the topic at the present session (concluded) (A/CN.4/L.554 and Corr.1 and 2)**

9. Mr. Sreenivasa RAO (Special Rapporteur) recalled that, at the time of the adoption of document A/CN.4/L.554, it had been decided to retain paragraphs 4 to 26 of the document. That decision was no longer justified, as the Commission had adopted a full set of articles together with commentaries. The practice of the Commission, which was to transmit the results of its work to the General Assembly as a collective endeavour, without the usual presentation of the views expressed during the debate, made it necessary to delete paragraphs 4 to 26.

*Section B, as amended, was adopted.*

10. Mr. PELLET proposed that a sentence should be inserted in the report expressing the Commission’s appreciation to the Special Rapporteur, who had completed his difficult task in record time.

*It was so agreed.*

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

**CHAPTER I. Organization of the session (A/CN.4/L.566)**

11. The CHAIRMAN said that the following names should be added to the list of members of the Working Group on unilateral acts of States contained in paragraph 8 (b) of the English version of the document: Mr. Nabil Elaraby, Mr. Gerhard Hafner, Mr. Qizhi He, Mr. Igor Lukashuk, Mr. Václav Mikulka, Mr. Didier Operti Badan and Mr. Christopher John Robert Dugard (ex officio).

*Chapter I, as amended, was adopted.*

**CHAPTER II. Summary of the work of the Commission at its fiftieth session (A/CN.4/L.571)**

12. Mr. PELLET proposed that it should be stated in paragraph 6, concerning the topic “Reservations to treaties”, that the Commission had adopted eight draft guidelines, not seven, thus also including the “umbrella” guideline.

*Chapter II, as amended, was adopted.*

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

### **Closure of the session**

13. The CHAIRMAN thanked his colleagues, particularly the members of the bureau and the Chairman of the Drafting Committee, for the patience, understanding and support they had shown throughout the session, thus enabling the Commission to maintain its tradition of efficiency and to achieve important results. He also expressed his appreciation to all the members of the secretariat who had assisted the Commission, both at Geneva and in New York.

14. Messrs BENNOUNA, GOCO, ILLUECA, KUSUMA-ATMADJA, MIKULKA and PELLET, speaking on behalf of their regional groups, paid tribute to the unwavering professionalism and personal qualities of the Chairman.

15. After the usual exchange of courtesies, the CHAIRMAN declared the fiftieth session of the International Law Commission closed.

*The meeting rose at 4 p.m.*