

Document:-
A/CN.4/SR.2607

Summary record of the 2607th meeting

Topic:
Other topics

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63. Mr. TOMKA said that paragraph 10 merely reflected the facts. It was true that a vote by show of hands had taken place, but the commentary to article 3 had been adopted without a vote. The Sixth Committee would not be considering the commentary, but the text itself. The views expressed during the debate would be reflected in the summary records and become part of the preparatory work; they could be consulted by anyone who so wished.

64. Mr. KATEKA said that, while he agreed with the views expressed by the Chairman and the Secretary to the Commission, a compromise was possible: the Chairman might, when submitting the report of the Commission on the work of its fifty-first session to the Sixth Committee, indicate that there had been some dissension concerning the adoption of paragraph (3) of the commentary to article 3.

65. Mr. ROSENSTOCK (Rapporteur) said that, in giving effect to Mr. Kateka's proposal, the Chairman would achieve the very result which the Commission had always tried to avoid in refraining from mentioning dissenting opinions in texts it adopted on second reading. It would be extremely unwise to introduce such a practice, but he would not formally object to Mr. Kateka's proposal.

66. The CHAIRMAN said that he had taken careful note of Mr. Kateka's proposal; he took it that the Commission wished to adopt chapter IV, paragraph 10, of its report indicating that it had adopted the commentaries to the aforementioned draft articles at its 2603rd, 2604th and 2606th meetings.

It was so agreed.

Paragraph 10 was adopted.

Section B was adopted.

C. Recommendations of the Commission

Paragraph 11

Paragraph 11 was adopted.

Paragraph 12

67. Mr. PELLET said that he was a bit frustrated: he certainly agreed that the work on nationality in relation to the succession of States was coming to a close as a result of States' obvious lack of interest in the problems of the nationality of legal persons, but he had always felt that the rights and obligations of legal persons in relation to the succession of States was an extremely interesting subject and one of great practical importance, especially as the end of the cold war had made such issues, which used to divide States deeply, less sensitive. He would therefore like to see that question mentioned somewhere in the report of the Commission, either in paragraph 12 or in the section on the long-term programme of work.

68. Mr. KABATSI said that, like Mr. Pellet, he was troubled by the finality expressed at the end of paragraph 12. He proposed that the words "for the time being" should be added before the last word of the paragraph, "concluded".

69. Mr. ROSENSTOCK (Rapporteur) pointed out that Mr. Pellet had made a compromise proposal; taking into account paragraph 468 of the report of the Commission on the work of its fiftieth session,⁵ cited in paragraph 12, it would not be appropriate to redraft the paragraph. It was, however, entirely appropriate, even necessary, to include Mr. Pellet's remark that the issue might be taken up in connection with the Commission's future work in the section of the report covering the Commission's long-term programme of work.

70. Mr. KABATSI noted that, as States had not shown interest in the question, it was not likely that they would approve its inclusion in the list of subjects for possible future work. In his view, it would be preferable to make the last sentence of paragraph 12 less final.

71. Mr. TOMKA said that the sentence in question was dictated by the decision reproduced in paragraph 12, which had been taken by the Commission the preceding year and which could not be reopened, and by the lack of interest shown by the Member States. The Working Group had proposed two approaches for future study of the topic, both of which would require a new mandate from the General Assembly. The Commission should try to complete its work on the other items on its agenda during the current quinquennium, but that would not prevent it from coming back to the topic of nationality of legal persons in relation to the succession of States if it received a mandate to do so from the General Assembly.

The meeting rose at 6.15 p.m.

⁵ *Yearbook ... 1998*, vol. II (Part Two), p. 89.

2607th MEETING

Tuesday, 20 July 1999, at 3.05 p.m.

Chairman: Mr. Zdzislaw GALICKI

Present: Mr. Addo, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Brownlie, Mr. Candiotti, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Gaja, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

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

CHAPTER IV. *Nationality in relation to the succession of States (concluded)* (A/CN.4/L.581 and Add.1)

C. *Recommendations of the Commission (concluded)* (A/CN.4/L.581)

Paragraph 12 (*concluded*)

1. The CHAIRMAN invited the Commission to resume its consideration of paragraph 12. He recalled that several members had proposed (2606th meeting) that something should be done to make it clear that the Commission intended to revert to the topic "Nationality in relation to the Succession of States" in the future. Although there was majority approval for the conclusion contained in paragraph 12, it was also felt that further qualification of its second part was required, perhaps in another chapter. That part read "... the Commission decided to recommend to the General Assembly that, with the adoption of the draft articles on nationality of natural persons in relation to the succession of States, the work of the Commission on the topic 'Nationality in relation to the succession of States' should be considered concluded". At the subsequent meeting of the Working Group on the long-term programme of work, he had successfully proposed a formula to be included in the report of the Working Group. The new text had also been approved by the Planning Group, with the result that it would come before the Commission as part of the report of the Planning Group. The relevant paragraph read:

"A further topic relating to the status of legal persons in relation to the succession of States was also brought to the attention of the Working Group. The Group decided that it needed a feasibility study on that subject in order to reach a decision. It decided to consider the subject, in the light of the feasibility study, at the next session."

2. Mr. ECONOMIDES said that, as a result of the Planning Group's wise initiative, the Commission could use the occasion of the adoption of the report to ask States once again about their interest in the issue of legal persons. He was not happy with the implication in paragraph 12 that the Commission intended to conclude its work on the topic on the basis of the low level of interest expressed by States. States took a long time to react. Given the fact that the relevant reports had already been adopted, the Commission could repeat its inquiries, perhaps with greater insistence, in parallel with the actions of the Planning Group, with a view to clarifying once and for all where States stood in relation to the issue of legal persons. The topic of legal persons was an important matter and the information received on it would complement the study which had already been carried out. Several of its aspects were of greater importance than aspects of the topic on natural persons. The information received on legal persons would also facilitate the work of the Planning Group, which would feel more free to draw its conclusions after having established that States really did not have an interest in the topic of legal persons. He would thus like paragraph 12 to be replaced by a fresh request to

States concerning their interest in the topic of legal persons.

3. The CHAIRMAN said that he agreed with Mr. Economides on the importance of the topic of nationality of legal persons. After thorough discussion, however, the Commission had agreed that it had virtually exhausted its mandate concerning the topic of nationality in relation to the succession of States. The Commission was satisfied that it had received sufficient responses from States on the subject of natural persons and that, after several attempts, it could go no further on the subject of legal persons, having received virtually no replies from States. Although the Commission regarded its task as complete for the time being, the discussions in both the Working Group on the long-term programme of work and in the Planning Group had revealed a will to continue with the topic at the next session. It was hoped that the proposed feasibility study would lead to the formulation of new arguments and questions that would stimulate a greater volume of replies from States. The aim of the feasibility study was not to kill off the topic, but to maintain it and build on what the Commission had already achieved.

4. Mr. KABATSI said that, in view of the Planning Group's recommendation, as just explained by the Chairman, it would seem contradictory to state in the conclusion contained in paragraph 12 that the work of the Commission on the topic of nationality in relation to the succession of States should "be considered concluded" when a different chapter now stated that the Commission intended to conduct a feasibility study. To redress the situation, he proposed that the end of paragraph 12 should be amended to read: "the work of the Commission on the topic of natural persons in relation to the succession of States be considered concluded." As it stood, paragraph 12 implied that the work on legal persons had also been concluded.

5. The CHAIRMAN said that he understood the reason for Mr. Kabatsi's proposal. However, the paragraph in question already contained references to the effect that the work of the Commission on the topic would be considered concluded "with the adoption of the draft articles on nationality of natural persons in relation to the succession of States". There was thus no need to repeat the idea. He recalled that, originally, the topic had been a general one relating to nationality in relation to the succession of States. The issue of the nationality of natural persons had been introduced later and it was therefore quite understandable that it should still be incomplete.

6. By contrast, he felt that the proposal Mr. Kabatsi had made (*ibid.*) for the inclusion of the phrase "for the time being" in paragraph 12 would bring the text more closely into line with the reference to the Commission's future work on the topic contained in the report of the Planning Group; paragraph 12 would then also reflect the history of the topic more completely.

7. Mr. ROSENSTOCK said that he agreed with the Chairman's reply to Mr. Economides. It was not a matter of deciding whether or not to have a new topic; the Commission was asking the Planning Group to consider whether a topic on nationality in relation to legal persons would be a worthwhile undertaking, without prejudice to

any other developments. He feared that any change in the wording of paragraph 12 might restrict the Planning Group's freedom of action when it came to the feasibility study on legal persons. The important thing was to keep that subject open, although he suspected that ultimately it would not be limited to the succession of States.

8. He was satisfied with the conclusion reached in paragraph 12, which was in part a response to the fact that, although by implication it had demonstrated its approval, the General Assembly had not replied directly to the Commission with regard to the decision the latter had taken at its forty-eighth session to focus on the topic of nationality in relation to the succession of States, with respect to natural persons.¹ He also had no problem with the recommendation that the Planning Group should examine the question of the future topic with a view to raising further questions on the nationality of legal persons. That was not in any way inconsistent with the conclusion that the Commission had felt it would have to draw, at its fiftieth session, should the silence on the part of the General Assembly continue.

9. Mr. ECONOMIDES said he could not agree that States had shown complete disinterest in the second part of the topic. His recollection was that Greece had declared that it was interested in the topic of legal persons. Thus, to say "In the absence of positive comments from States" in paragraph 12 was incorrect.

10. The CHAIRMAN said it was his recollection that no written response had been received from States following the final appeal for contributions which the Commission had made in its report to the General Assembly on the work of its fiftieth session.²

11. Mr. MIKULKA (Secretary to the Commission) said that, when the topic had first been included in the Commission's agenda at its forty-fifth session,³ States had been requested to submit to the Commission, through the Secretariat, details of their national legislation relating to the issue, together with any material that would facilitate the Commission's study of the topic.⁴ The invitation had referred to nationality issues in respect of both natural and legal persons. The result was that abundant documentation had been received in respect of the former and none in respect of the latter.

12. Mr. Economides was correct in saying that Greece had expressed a short favourable opinion on the second part of the topic during the discussions in the Sixth Committee.⁵ Subsequently, however, Greece had not submitted any documentation. By contrast, a number of other States, including those directly involved in State succession, had indicated clearly in the Sixth Committee that they were not interested in the second part of the topic. At its fiftieth session, the Commission had discussed the

fourth report of the then Special Rapporteur,⁶ who had proposed two strategies for dealing with the second part of the topic in response to the prevailing opinion that the topic of the nationality of legal persons in relation to the succession of States was not broad enough to warrant an independent study by the Commission. The two options were summarized in paragraphs 461 to 468 of the report of the Commission on the work of its fiftieth session. Neither option seemed to have attracted the attention of the Sixth Committee and, to date, no response or further comment had been received from any State.

13. Mr. LUKASHUK said that he endorsed the whole report. In general terms, the success of the Commission's work depended on the topics it selected for study. In that regard, the Commission's statute clearly stated that the Commission had a duty to review all areas of international law, but to focus on the issues that seemed most topical and appropriate. Thus, the Commission could not simply choose topics at random and, if it abandoned its systematic approach, its work would not be so effective.

14. His second point, and one which had been addressed by the General Assembly at its fifty-third session, had to do with the fragmentation of international law. The topics examined by the Commission related to several major fields of international law, all of them involving many different types of institution. Consequently, no topic could be studied in isolation and the Commission was obliged to adopt a very thorough approach in selecting topics. It must also seek to maximize the contribution it could make, taking into account the interests of its members.

15. In that regard, while the Commission was called on to deal with matters of topical relevance, it was also uniquely placed to examine particularly pressing concerns. An example was the special task with which the Commission had been entrusted in the context of the United Nations Decade of International Law,⁷ namely, to study and promote knowledge of international law worldwide. The task was a crucial one, since the manner in which it was handled would determine the future effectiveness of the entire system of international law. A number of speakers invited to appear before the Commission had described how human rights legislation and the supremacy of law were directly affected by the overall level of legal expertise.

16. He thus proposed that the Commission should undertake a preliminary study with a view to drawing up articles on the study and promotion of international law, in implementation of the tasks which the Commission had been set by the General Assembly in the framework of the United Nations Decade of International Law.

17. The CHAIRMAN said that, as there were no further comments, he took it that the Commission wished to adopt paragraph 12 as it stood.

It was so agreed.

Paragraph 12 was adopted.

Section C was adopted.

¹ *Yearbook ... 1996*, vol. II (Part Two), p. 76, document A/51/10, para. 88.

² *Yearbook ... 1998*, vol. II (Part Two), p. 89, para. 468.

³ *Yearbook ... 1993*, vol. II (Part Two), pp. 96-97, paras. 427 and 440, respectively.

⁴ *Yearbook ... 1995*, vol. II (Part Two), p. 33, para. 145.

⁵ See *Official Records of the General Assembly, Fiftieth Session, Sixth Committee, 22nd meeting (A/C.6/50/SR.22)*, and corrigendum, para. 63.

⁶ *Yearbook ... 1998*, vol. II (Part One), document A/CN.4/489.

⁷ See 2575th meeting, footnote 4.

D. Tribute to the Special Rapporteur, Mr. Václav Mikulka, and to the Chairman of the Working Group, Mr. Zdzislaw Galicki

Paragraph 13

18. Mr. ROSENSTOCK said that it had become a matter of routine for the Commission to adopt a resolution expressing thanks to the Special Rapporteur. However, it was one of those occasions when the Special Rapporteur, Mr. Mikulka, should be given particular praise. He had made a singular contribution to the topic over the years through his originality, the quality and timelessness of his reports and the thoroughness of his scheduling, enabling the Commission to approach its work on the basis of sufficient preparation and with ample time for reflection. As a measure of the Special Rapporteur's contribution, conversations he had held with representatives of UNHCR indicated that the work the Commission had carried out on the topic could be applied directly in the context of the human tragedies with which they were concerned. He therefore enthusiastically endorsed the resolution, which also paid a tribute to the work done by the Chairman of the Working Group, Mr. Galicki, after the Special Rapporteur had moved on to other areas of the Commission's work.

Paragraph 13 was adopted.

Section D was adopted.

Chapter IV, as a whole, as amended, was adopted.

CHAPTER IX. International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) (A/CN.4/L.586)

A. Introduction

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

Paragraph 3

19. Mr. KATEKA pointed out that, as the paragraph referred to the Commission's work of the previous year, it should begin "At its fiftieth session", and not "At its fifty-first session".

Paragraph 3, as amended, was adopted.

Paragraphs 4 to 6

Paragraphs 4 to 6 were adopted.

Section A, as amended, was adopted.

B. Consideration of the topic at the present session

Paragraphs 7 to 9

Paragraphs 7 to 9 were adopted.

Paragraph 10

20. Mr. SIMMA pointed out that the antecedent of the word "deferring" was ambiguous and might be taken to be

the "overwhelming majority of the members who spoke". He proposed that that word should be replaced by the phrase "i.e. to defer".

21. Mr. ROSENSTOCK (Rapporteur) said that he endorsed the proposed correction as an improvement on the text and a better reflection of what had actually happened.

It was so agreed.

22. Mr. KATEKA recalled that he had expressed great concern about the substantive issue of how the Commission had dealt with the topic of international liability for injurious consequences arising out of acts not prohibited by international law for the past 20 years.

23. Mr. AL-KHASAWNEH said that he shared that concern.

24. Mr. PELLET said that those two comments indicated that the phrase "The overwhelming majority of members" was somewhat excessive. As it was also not the Commission's practice to use such wording, he proposed that, in the French version, the words *L'immense majorité* should be replaced by the words *La grande majorité*.

25. Mr. KATEKA, supported by Mr. Sreenivasa RAO (Special Rapporteur), suggested that, in English, the words "The overwhelming majority" should be replaced by the word "Most".

Paragraph 10, as amended, was adopted.

Paragraph 11

26. Mr. GOCO suggested that the word "defer" should be replaced by the words "hold in abeyance" to reflect the fact that the Commission had expressed a real desire to tackle the question of international liability, as opposed to dealing only with prevention.

27. Mr. ROSENSTOCK (Rapporteur) said he would not oppose that amendment, but would prefer to retain the text as it stood, as it more accurately captured the general mood of the Commission. The Special Rapporteur had proposed three options: to move forward on the question of liability, to suspend work on that question until the draft articles on prevention had been finalized and to terminate the work on liability. Each option had had its supporters, with the majority favouring the second option. The change suggested by Mr. Goco would obliterate any reference to the views of that school of thought.

28. Mr. Sreenivasa RAO (Special Rapporteur) said that he endorsed those comments. The text as it stood struck the required balance and was likely to be acceptable to all members.

29. Mr. SIMMA said it was true that the proposed amendment was likely to create difficulties.

Paragraph 11 was adopted.

Section B, as amended, was adopted.

Chapter IX, as a whole, as amended, was adopted.

CHAPTER VI. *Reservations to treaties* (A/CN.4/L.583 and Add.1-5)

A. Introduction (A/CN.4/L.583)

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

Paragraph 4

30. Mr. TOMKA, referring to the first part of the last sentence, asked whether the word “draft” had to be included before the word “guidelines”.

31. Mr. ROSENSTOCK (Rapporteur) said that, since the paragraph was merely descriptive and did not specify whether the subject was the result of the Commission’s work or the final product, there was no reason why the word “draft” needed to be retained.

32. Mr. PELLET (Special Rapporteur) said that the deletion would certainly be advantageous, but might be a bit audacious. It meant that the Guide to Practice prepared by the Commission would be the end product and would not require approval by any other body. There was no compelling need to delete the word “draft” and he would prefer to retain it.

33. Mr. HAFNER said that the last sentence did not appear in the report of the Commission on the work of its fiftieth session. That indicated that the decision that the Guide to Practice would take the form of draft guidelines with commentaries had been adopted at the current session. He requested clarification as to when the decision had been taken.

34. Mr. ROSENSTOCK (Rapporteur) said that the decision had been taken at the forty-seventh session⁸ and had served as the basis for the Commission’s work ever since.

35. Mr. PELLET (Special Rapporteur) said that that was true. The deletion of the word “draft” raised the question whether the Guide to Practice was a product of the Commission which would be imposed on the international community or whether the Commission would try to have it adopted by the General Assembly. He was convinced that the implications of the deletion were important enough to warrant further consideration and that the text should be retained unchanged.

36. Mr. ELARABY said that he supported the position taken by the Special Rapporteur. The deletion of the word “draft” might be premature, there was no pressing need for it and it could in fact have broad implications.

37. Mr. GOCO said that he, too, endorsed the comments made by the Special Rapporteur. The deletion was premature and would create inconsistencies, as the words “draft guidelines” appeared throughout the text.

38. Mr. TOMKA said that he would not press for his amendment.

Paragraph 4 was adopted.

⁸ See *Yearbook ... 1995*, vol. II (Part Two), p. 108, document A/50/10, para. 487 (b).

Paragraphs 5 to 12

Paragraphs 5 to 12 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraph 13

Paragraph 13 was adopted.

Paragraph 14

39. Mr. PELLET (Special Rapporteur) said that, in the first sentence of the French text, the word *directive* should be in the plural and the phrase should then read *projets de directives* because there were several drafts relating to several guidelines, not several drafts relating to one guideline. The same comment applied to paragraph 11. He had pointed that out a number of times to the secretariat, which refused to listen to reason. He therefore called on the secretariat systematically to put an “s” on *directive* in the phrase *projets de directive* of the French version whenever several different guidelines were meant.

40. Mr. MIKULKA (Secretary to the Commission) said he regretted that he could not give the Special Rapporteur any guarantee that his request would be met. The question had been raised with the French translation service, which had informed the secretariat that, grammatically speaking, the word *projet* should be in the plural, while *directive* took the singular.

41. Mr. PELLET (Special Rapporteur) said that he protested vigorously. Since there were several drafts concerning several guidelines, the word *directive* took an “s”: that was a fact, regardless of what the translation and editing services believed. It was inadmissible to retain absurdities just because that was the wish of the translation and editing services. The French language was not as extravagant as the translators and editors thought.

42. Mr. GAJA said that he agreed with Mr. Pellet on the need to put the word *directive* in the plural in the French version.

43. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt paragraph 14 as proposed.

It was so agreed.

Paragraph 14 was adopted with a minor correction to the French version.

Paragraph 15

44. Mr. SIMMA said that, at the end of the first sentence, the words “himself had some doubts about their utility and he” should be deleted; it was sufficient to say that “the Special Rapporteur had proposed them only tentatively”.

45. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt paragraph 15, as amended.

It was so agreed.

Paragraph 15, as amended, was adopted.

Paragraph 16

46. The CHAIRMAN said that there was a typographical error. The number in square brackets should read "18", not "17".

47. Mr. PELLET (Special Rapporteur) said that the square brackets could be deleted because it was now certain that there were 18 draft guidelines in all.

48. The CHAIRMAN, noting that the exact dates and the number of meetings would also be filled in, said that, if he heard no objection, he would take it that the Commission wished to adopt paragraph 16 with those drafting changes.

It was so agreed.

Paragraph 16, as amended, was adopted.

Section B, as amended, was adopted.

C. Draft guidelines on reservations to treaties (A/CN.4/L.583/Add.1-5)

1. TEXT OF THE DRAFT GUIDELINES ON RESERVATIONS TO TREATIES PROVISIONALLY ADOPTED BY THE COMMISSION ON FIRST READING (A/CN.4/L.583/ADD.1)

49. The CHAIRMAN asked the members of the Commission whether they were prepared to adopt the text of the draft guidelines on reservations to treaties as a whole.

50. Mr. ECONOMIDES said that he was in favour of adopting the draft guidelines as a whole, but drew attention to the fact that one draft guideline was missing and should be inserted after draft guideline 1.3.3 [1.2.3], namely, the case of a unilateral statement which was contrary to the object and purpose of a treaty. Draft guideline 1.3.3 [1.2.3] dealt only with cases of a treaty which prohibited certain reservations. Some treaties allowed reservations, however, and, in those cases, a provision was needed which said that, when a treaty did not prohibit reservations, a reservation formulated with regard to that treaty was deemed not to be contrary to the object and purpose of the treaty, in keeping with the principle of good faith, unless that was not true, in which case the reservation was impermissible.

51. The CHAIRMAN pointed out that, as the Commission had just adopted sections A and B, it could not return to the substance. He requested the members to confine themselves to corrections of possible mistakes in section C.1.

52. Mr. TOMKA said that the wording of draft guideline 1.5.2 [1.2.7] was imprecise. The text should read: "Guidelines 1.2 and 1.2.1 [1.2.4] are applicable to interpretative declarations in respect of multilateral as well as bilateral treaties."

53. Mr. CANDIOTI said that, in the Spanish text of draft guidelines 1.1.3 [1.1.8] and 1.1.4 [1.1.3], for example, the terms adopted at the fiftieth and fifty-first sessions should be consistent.

54. Mr. KABATSI said that he found the method of numbering the guidelines cumbersome and unhelpful.

55. Mr. SIMMA, endorsing Mr. Kabatsi's comment, said that the cumbersome numbering of the guidelines was especially striking in paragraph 1. Was that paragraph really needed?

56. The CHAIRMAN said that, as he understood it, paragraph 1 was a kind of draft guideline on the draft guidelines, without which the Commission might be lost. In future, the Commission might ask the Special Rapporteur to try to simplify the numbering. The Special Rapporteur had retained the double numbering to make it easier to compare the texts, but eventually the time would come to number the paragraphs uniformly.

57. Mr. HAFNER said that the footnote to draft guideline 1.1.3 [1.1.8] seemed to be hanging in mid-air, since there was no indication as to when a decision had been taken on that guideline.

58. Mr. ECONOMIDES said that he endorsed the comments by Mr. Kabatsi and Mr. Simma on the numbering of the draft guidelines. Once section C.1 was adopted by the Commission, it was no longer the Special Rapporteur's draft guidelines. He saw no reason why there should be three figures when one would suffice. The numbering must be simplified for the sake of future readers. He asked the secretariat whether it was the Commission's practice to number the draft guidelines in such a complex manner. It would have been much more practical to have part one take a Roman numeral, followed by a capital letter and an Arabic numeral.

59. The CHAIRMAN said that he fully agreed with Mr. Economides. However, he reminded the members that, as the double system of numbering had already been adopted along with the draft guidelines, it would be rather strange to change it because that would constitute a substantial intrusion into the adopted text. He agreed with Mr. Hafner's suggestion because footnotes were another matter. Proposals for a different system of numbering should be made at the next session.

60. Mr. KATEKA recommended that paragraph 1 should be deleted because it looked like a logarithm. Referring to Mr. Hafner's suggestion on the footnote to draft guideline 1.1.3 [1.1.8], he said that an asterisk should be added in order to show which guidelines had been adopted at the fiftieth session and which had been adopted at the fifty-first session.

61. Mr. PELLET (Special Rapporteur), pointing out that he had already explained why the system of numbering had been chosen, expressed dismay that the issue had been raised again at the current stage and emphasized that he was fundamentally opposed to any alteration of that system. The Chairman had referred to a different matter, namely, whether a reference in brackets to guidelines adopted at the fiftieth session should be retained. Since such a reference was advisable, he proposed that, in paragraph 1, the long list of numbers should be deleted and that the sentence should read: "The text of the draft guidelines provisionally adopted by the Commission at its fiftieth and fifty-first sessions is reproduced below." The numbering used in the text of the draft guidelines should

be retained in brackets, but, in the text of draft guideline 1.5.2 [1.2.7], the number in brackets, “[1.2.4]” should be deleted.

62. The footnote to draft guideline 1.1.3 [1.1.8] raised a more general question. He believed that more systematic footnotes were required to indicate not only which draft guidelines had been adopted at the fiftieth session, but also exactly where the relevant commentaries were to be found. Special footnotes would, however, be needed on draft guidelines 1.1.1 [1.1.4] and 1.1.3 [1.1.8] to explain that there was a fresh commentary to draft guideline 1.1.1 [1.1.4] because it had been provisionally adopted at the fiftieth session, but revised and amended at the current session, whereas draft guideline 1.1.3 [1.1.8] had not been changed and there was thus no new commentary.

63. Mr. ROSENSTOCK (Rapporteur) stated that he saw considerable merit in including a reference to the commentaries to the draft guidelines provisionally adopted at the fiftieth session, but urged the Special Rapporteur to reconsider the disastrous numbering system.

64. Mr. GAJA proposed that paragraph 1 should be used as an index, as that would obviate any need for the incorporation in the text of numbers in brackets, which were of no immediate use.

65. Mr. SIMMA said that he supported Mr. Pellet’s proposal on paragraph 1.

66. Mr. PELLET (Special Rapporteur) said he agreed that paragraph 1 should be amended, but was opposed to the deletion of the footnote to draft guideline 1.1.3 [1.1.8]; he believed, rather, that a footnote to draft guideline 1.1.3 [1.1.8] should be added.

67. Mr. MIKULKA (Secretary to the Commission) said that, in sections C.1 and C.2, the secretariat had merely followed the Commission’s normal practice. If it wished to alter that practice, it would have to do so for all topics under consideration and it should therefore consider the consequences of such a step.

68. Mr. PELLET (Special Rapporteur) said that precedents did not necessarily have to be followed in all cases.

69. Mr. HAFNER said that he endorsed Mr. Pellet’s proposal on footnotes.

70. Mr. KATEKA said that he agreed with Mr. Hafner and Mr. Pellet on the inclusion of footnotes.

71. Mr. PELLET (Special Rapporteur) said that, on the basis of Mr. Tomka’s suggestion, draft guideline 1.5.2 [1.2.7] should be amended to read: “Guidelines 1.2 and 1.2.1 are applicable to interpretative declarations in respect of multilateral as well as bilateral treaties.” The title should be amended accordingly.

It was so agreed.

72. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt the text of the draft guidelines, as amended by the deletion of the guideline numbers from paragraph 1, the inclusion of appropriate footnotes concerning the genesis of certain draft guidelines, the deletion in the text of draft guideline

1.5.2 [1.2.7] of the numbers in square brackets and the adoption of Mr. Tomka’s suggestion.

It was so agreed.

Section C.1, as amended, was adopted.

The meeting rose at 5.20 p.m.

2608th MEETING

Wednesday, 21 July 1999, at 10.05 a.m.

Chairman: Mr. Zdzislaw GALICKI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Gaja, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

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

CHAPTER VI. *Reservations to treaties (continued)* (A/CN.4/L.583 and Add.1-5)

C. *Draft guidelines on reservations to treaties (continued)* (A/CN.4/L.583/Add. 1-5)

2. TEXT OF THE DRAFT GUIDELINES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-FIRST SESSION (A/CN.4/L.583/ADD.2-5)

Commentary to guideline 1.1.1 [1.1.4] (A/CN.4/L.583/Add.2)

1. Mr. HAFNER, referring to paragraph (5), said that it was too categorical to say that across-the-board reservations had never raised any particular objection; he would prefer to say that they had never raised any major objection.

2. Mr. PELLET (Special Rapporteur) replied that it was simply incorrect to say that across-the-board reservations had never raised any major objection: they had, but not because of their across-the-board nature, not “as such”. Mr. Hafner’s proposal tended to give the first sentence of paragraph (5) a meaning that was unacceptable.

3. Mr. HAFNER thanked the Special Rapporteur for his explanation; however, he remained concerned at the unconditional nature of the statement. He proposed a