

Document:-
A/CN.4/SR.2611

Summary record of the 2611th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1999, vol. I

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63. Mr. LUKASHUK said that he feared the report of the Commission would make a negative impression on the members of the Sixth Committee: the Commission was proposing nothing substantial for the future, no issues of truly general interest. He noted that the Commission's statute required it to survey the whole field of international law with a view to selecting topics for study. If it did not, it would be forced to choose from topics proposed by certain of its members in accordance with their own interests, and that would do nothing to strengthen its authority as far as the Sixth Committee was concerned.

64. Mr. BROWNLIE (Chairman of the Working Group on the Long-Term Programme of Work) said that he had also found the results of the Working Group disappointing. The reality was that the Working Group was a collective body and that topics which were not favoured by the majority of members were rejected. He personally endorsed Mr. Economides' comments, although his *dédoublement fonctionnel* in that department prevented him from making extensive comments.

65. Mr. PELLET said he did not have the same idea as some members about the role of the Working Group on the Long-Term Programme of Work. The Working Group's responsibility was to find one or perhaps two topics to be taken up when the consideration of the current topics had been completed, not to provide an endless list of topics.

66. Mr. LUKASHUK said that he disagreed with Mr. Pellet's point of view; topics should be chosen with the long-term programme of work in mind, as the Working Group's title indicated.

67. Mr. HAFNER proposed that the footnote in the first sentence of paragraph 3 should make a distinction between the topics which had already been accepted and those which had not in order to give the Sixth Committee a clear idea of the views which had been expressed during the discussion.

68. The CHAIRMAN said that, as indicated in paragraph 10, the Working Group would continue its work at the fifty-second session of the Commission and that the report of the Commission would include all the opinions expressed during the discussion.

It was so agreed.

The meeting rose at 12.20 p.m.

2611th MEETING

Friday, 23 July 1999, at 10.05 a.m.

Chairman: Mr. Zdzislaw GALICKI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Brownlie, Mr.

Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Gaja, Mr. Goco, Mr. Hafner, Mr. Kabatsi, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka.

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

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

C. *Draft guidelines on reservations to treaties (concluded)* (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 (*concluded*)* (A/CN.4/L.583/ADD.2-5)

Commentary to section 1.5 (A/CN.4/L.583/Add.5)

The commentary to section 1.5 was adopted.

Commentary to guideline 1.5.1 [1.1.9]

1. Mr. GAJA said that paragraph (6) gave the impression that a choice had been made by the 1978 Vienna Convention between multilateral treaties and bilateral treaties, whereas, in fact, notification of succession was applicable only to multilateral treaties. He therefore suggested that the following phrase should be added at the end of paragraph (6): "the notification of succession being generally admitted in respect of open multilateral treaties."

The commentary to guideline 1.5.1 [1.1.9], as amended, was adopted.

Commentary to guideline 1.5.2 [1.2.7]

2. Mr. GAJA said that, for the sake of clarity, the word *elles* in the first sentence of paragraph (1) of the French text should be replaced by the words *les Conventions*.

3. Mr. PELLET (Special Rapporteur) said that it might be better to say *ces Conventions*. He also pointed out that it had already been decided that the reference to [1.2.4] should be deleted in the draft guideline.

The commentary to guideline 1.5.2 [1.2.7], as amended, was adopted.

Commentary to guideline 1.5.3 [1.2.8]

4. Mr. GAJA said that, in the penultimate sentence of paragraph (2), the words "article 31" should be inserted between the words "in the sense of" and the words "paragraphs 2 and 3 (a)".

* Resumed from the 2608th meeting.

5. Mr. SIMMA said that, in the footnote concerning the form of an interpretation, in paragraph (2), the word “verbal” should be replaced by the word “oral”.

6. Mr. ROSENSTOCK (Rapporteur) said that he agreed with Mr. Simma: there was no point in referring to a verbal agreement, since all agreements were verbal. The words “simple oral agreement” should be used in that footnote.

7. Mr. PAMBOU-TCHIVOUNDA asked whether it would not be preferable to find better wording for the phrase “and itself takes on the nature of a treaty” in paragraph (2). The nature of a treaty had nothing to do with the interpretation of a treaty.

8. Mr. PELLET (Special Rapporteur) said that he disagreed with Mr. Pambou-Tchivounda. A treaty could take any form, including an oral agreement. When both parties agreed on an interpretation, their agreement took on the nature of a treaty. There was an agreement on an interpretation. That was made clear in the sentence that followed: it became an agreement collateral to the treaty which formed part of its context.

The commentary to guideline 1.5.3 [1.2.8], as amended, was adopted.

Commentary to guideline 1.6 [1.4]

9. Mr. PAMBOU-TCHIVOUNDA said that the words “draft articles” in paragraph (2) should read “draft guidelines”.

The commentary to guideline 1.6 [1.4], as amended, was adopted.

Section C.2, as amended, was adopted.

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

CHAPTER VIII. Unilateral acts of States (A/CN.4/L.585 and Add.1)

A. Introduction (A/CN.4/L.585)

Paragraphs 1 to 8

Paragraphs 1 to 8 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraph 9

Paragraph 9 was adopted.

1. INTRODUCTION BY THE SPECIAL RAPPORTEUR OF HIS SECOND REPORT

Paragraphs 10 to 42

Paragraphs 10 to 42 were adopted.

Section B.1 was adopted.

2. SUMMARY OF THE DEBATE

Paragraphs 43 to 92

Paragraphs 43 to 92 were adopted.

Section B.2 was adopted.

3. ESTABLISHMENT OF A WORKING GROUP (A/CN.4/L.585/ADD.1)

10. Mr. SIMMA said that it was difficult to distinguish between what had been said in the Commission and in the Working Group. Paragraph 22 should perhaps specify at which meeting the Commission had adopted the report of the Working Group.

11. Mr. PELLET said that he had the same problem as Mr. Simma. Actually, everything that preceded paragraph 22 was, in fact, the report of the Working Group, along with the changes made. It would be better to say so. He therefore suggested that paragraph 22 should be amended to read: “At the same meeting, the Commission adopted the report of the Working Group as amended by the Commission.”

Section B.3, as amended, was adopted.

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

CHAPTER I. Organization of the session (A/CN.4/L.578 and Corr.1)

Chapter I was adopted.

CHAPTER II. Summary of the work of the Commission at its fifty-first session (A/CN.4/L.579)

12. Mr. PELLET (Special Rapporteur) requested that a reference to his fourth report on reservations to treaties (A/CN.4/499 and A/CN.4/478/Rev.1)¹ should be included in paragraph 3 and suggested that the consideration of countermeasures by the Commission should be mentioned in paragraph 2.

13. Mr. ROSENSTOCK (Special Rapporteur) said that he had no objection to the inclusion of a reference to the discussion of countermeasures in paragraph 2.

14. Mr. TOMKA said that, in paragraph 13, the number of participants should be corrected to read “23”.

15. The CHAIRMAN stated that a decision had not yet been taken on the dates of the next session and suggested that paragraph 14 should be adopted on the understanding that the decision would be taken when the Commission considered chapter X.

It was so agreed.

Chapter II, as amended, was adopted.

CHAPTER III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.580)

Chapter III was adopted.

¹ Reproduced in *Yearbook ... 1999*, vol. II (Part One).

Programme, procedures and working methods of the Commission, and its documentation (concluded) (A/CN.4/496, sect. G, A/CN.4/L.577 and Add.1, A/CN.4/L.589)

[Agenda item 10]

REPORT OF THE PLANNING GROUP (*concluded*)

16. The Chairman said that, if he heard no objection he would take it that the Commission wished to endorse the report of the Planning Group (A/CN.4/L.577 and Add.1) including the interim report of the Working Group on the Long-Term Programme of Work (A/CN.4/L.589), which had been considered by the Commission under section 5 of the report of the Planning Group.

It was so agreed.

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

CHAPTER X. Other decisions and conclusions of the Commission (A/CN.4/L.587 and informal corrigendum and Add.1 and informal corrigendum)

A. Programme, procedures and working methods of the Commission, and its documentation (A/CN.4/L.587/Add.1 and informal corrigendum)

3. WORK PROGRAMME OF THE COMMISSION FOR THE REMAINDER OF THE QUINQUENNIAL

Section A.3, as amended by the informal corrigendum, was adopted.

B. Cooperation with other bodies (A/CN.4/L.587 and informal corrigendum)

17. Mr. PELLET said that paragraph 6 should be corrected as he had addressed the Ad Hoc Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe in September 1998.

Section B, as amended, was adopted.

C. Date and place of the fifty-second session

Section C, as amended by the informal corrigendum, was adopted.

E. International Law Seminar

18. Mr. PELLET stressed that the Commission should have a say in the selection of participants in the International Law Seminar. That matter should be discussed in the Planning Group.

19. Mr. CRAWFORD said that, although the Seminar had sometimes been very well attended, he also thought that a brief exchange of views should be held by the Planning Group early in the next session.

20. The CHAIRMAN, referring to the footnote in paragraph 13, said that "Mrs." would be replaced by "Ms." in accordance with the standard practice of the United

Nations. In paragraph 21, "Germany" should be added between "Finland" and "Hungary".

Section E, as amended, was adopted.

A. Programme, procedures and working methods of the Commission, and its documentation (A/CN.4/L.587/Add.1 and informal corrigendum) (concluded)

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

1. PROCEDURES AND WORKING METHODS OF THE COMMISSION, AND ITS DOCUMENTATION

Paragraph 3

Paragraph 3 was adopted.

Subsection (a)

Subsection (a) was adopted.

Subsection (b)

Subsection (b) was adopted.

Subsection (c)

21. Mr. PAMBOU-TCHIVOUNDA said that he was not sure whether enough consideration had been given to the possible effects that the innovations planned under the proposed split session might have on people's perceptions of the Commission. In particular, it seemed to him that the General Assembly regarded the Commission as a homogeneous body, whereas the penultimate sentence of subsection (c) (iv) implied that the Commission was to become more fragmented.

22. The Commission first had to explain to the General Assembly what the new way of working would involve. A footnote to that effect could be included. It then had to reassure its members about the terms of their involvement in its work. To that end, he proposed that the sentence he had referred to should be amended to read: "limited numbers of members of the Commission, without prejudice to the right of all members to participate in the work of the 10 remaining bodies."

23. Mr. KABATSI said the sense of subsection (c) (iv) was that savings could be made through the introduction of meetings that required the attendance of limited numbers of the Commission's members. The implication of the proposal just made seemed to be that attendance should be an open-ended matter. He was not necessarily opposed to that, but wished to point out that acceptance of the proposal would necessitate the redrafting of the whole subsection (c) (iv).

24. Mr. ROSENSTOCK (Rapporteur) said that the matter had been discussed at length, most recently during informal consultations in which virtually all members had expressed their opinions in good faith and conclusions

had been reached by the appropriate means. He saw no point in reopening the debate.

25. Mr. PAMBOU-TCHIVOUNDA said it was not his intention to break with the good faith shown during those informal discussions. However, he had originally made his comment at that time, only to be told that his point could not be taken as there was no longer any interpretation available. He did not see why, in the context of the Commission's current discussion of a chapter of its report, the Commission could not decide to reflect in the text points raised by him or other members.

26. The CHAIRMAN said that the matter had been thoroughly discussed, firstly in the working group on the split session and then in the Planning Group. Those exchanges of opinions had led to the production of the text now before the members. He asked the members to indicate by a show of hands whether they accepted Mr. Pambou-Tchivounda's proposal.

The proposal was rejected by 12 votes to 1, with 3 abstentions.

27. Mr. ECONOMIDES said that the Planning Group would need to meet at the very beginning of the next session in order to ensure that all the necessary arrangements relating to the split session had been made.

28. The CHAIRMAN drew attention to the last sentence of subsection (c) (iv), which read: "The Commission would put into effect such arrangements already in the year 2000."

29. Mr. PELLET said he still had a problem with the third paragraph of subsection (c). At the Planning Group's meeting, he had proposed that the end of the second sentence should be changed from "budgetary considerations may be regarded by some as a factor" to "budgetary considerations are a factor".

30. Mr. ROSENSTOCK said that the matter was of little consequence in the current context. He would not object to the proposal, but did not find it compelling and did not agree that it had been accepted during the Planning Group's meeting. It did not seem unreasonable to him to say that some members regarded the cost implications of a split session as a factor, while others did not. To say that everybody accepted the fact that cost was a factor which should automatically be considered was neither accurate nor necessary.

31. Mr. AL-KHASAWNEH said he did not consider that the Commission should be discussing any further modifications.

32. The CHAIRMAN reminded the members that it had been agreed during the meeting to endorse the report of the Planning Group, that, at the current meeting, the floor would be open for members to make contributions on substantive points to be included in chapter X.

33. Mr. AL-KHASAWNEH said it was simply illogical to state that budgetary considerations must in effect be regarded as a factor. He was opposed to Mr. Pellet's proposal.

34. Mr. AL-BAHARNA said he preferred the version that conformed with the informal corrigendum, i.e. with only the words "by some" being deleted. To accept Mr. Pellet's proposal would be to formulate a sentence implying that the Commission wished to make a judgement which in fact came within the Secretariat's sphere of competence.

35. Mr. ADDO said he agreed with Mr. Rosenstock that the issue was not one on which the Commission should spend time quibbling. He also agreed with Mr. Al-Baharna that the sentence should be retained in its current form, as already amended by the deletion of the words "by some".

36. Mr. PELLET said that he withdrew his proposal.

Subsection (c) was adopted.

2. LONG-TERM PROGRAMME OF WORK

37. Mr. ECONOMIDES said that the Commission had before it an informal corrigendum to chapter X, section A.2, of its report containing three paragraphs on the long-term programme of work. That represented a departure from established practice, since the long-term programme of work had always been the subject of a separate section of chapter X of the report. The three paragraphs did not mention the topics on which feasibility studies had been requested and on which the possibility of carrying out studies had been discussed, but not decided on. That information should be included in the report for the benefit of the Sixth Committee. It was in the interests of the Commission to ensure that as much information as possible was disseminated on all aspects of its work.

38. The CHAIRMAN said that the substance of the long-term programme of work, as described in the informal corrigendum to chapter X, section A.2, was taken from the interim report of the Working Group on the Long-Term Programme of Work. The Working Group itself had indicated that it had not completed its task and only the work done so far was summarized in its report, without prejudice to the final result of that work, which would be continued at the fifty-second session of the Commission. On the basis of a recommendation by the Planning Group, the Rapporteur had decided to include in the report the information now available on the long-term programme of work, but that in no way diminished the significance of the Working Group's ongoing efforts or implied that those efforts would be abandoned.

39. Mr. BROWNLIE (Chairman of the Working Group on the Long-Term Programme of Work) said that a cross-reference to the interim report in the proposed corrigendum to chapter X, section A.2, might be helpful.

40. Mr. MIKULKA (Secretary of the Commission) said that, since the interim report was in a limited distribution document, a cross-reference was impossible.

Section A.2 was adopted.

Section A, as amended, was adopted.

D. Representation at the fifty-fourth session of the General Assembly (A/CN.4/L.587)

41. The CHAIRMAN said that the names of members of the Commission who would assist him in representing it at the fifty-fourth session of the General Assembly had to be added to paragraph 11. According to tradition, one or more of the special rapporteurs performed that function. He understood from his consultations that it might be possible for two Special Rapporteurs, Mr. Sreenivasa Rao and Mr. Rodríguez Cedeño, to attend the Assembly, on the understanding that the costs of their travel would be shared by the Commission and one of their Governments, so as to avoid financial outlay in excess of that for a single special rapporteur.

42. After a procedural discussion in which Mr. AL-KHASAWNEH, Mr. KATEKA and Mr. Sreenivasa RAO took part, Mr. MIKULKA (Secretary of the Commission) explained that the basis for the participation of special rapporteurs in the General Assembly was Assembly resolution 44/35, paragraph 5, which indicated that the Commission could "request a special rapporteur" to attend a session and that the Secretary-General should make the necessary arrangements "within existing resources". The Commission thus had a budgetary mandate for the participation of one special rapporteur, subject to the availability of resources. Whether or not such resources would be available would become clear only once the costs of the current session had been calculated.

43. Mr. PELLET said that there was no need for an unduly formalistic interpretation of the Commission's budgetary mandate. There was nothing to prevent the Commission from indicating in paragraph 11 that it wished to request two special rapporteurs to attend the fifty-fourth session of the General Assembly. Appropriate financial arrangements could certainly be worked out.

44. The Sixth Committee's new practice of permitting any special rapporteur present during the General Assembly to speak on his area of expertise was welcome. By extension, the Chairman of the Working Group on jurisdictional immunities of States and their property should also be entitled to speak. He understood that the Chairman and the members of the Sixth Committee would welcome such participation in their consideration of that complex topic.

45. Mr. CRAWFORD said he agreed that the new practice was a valuable addition to the working methods of the Sixth Committee that would enable special rapporteurs to respond to comments on their topics. He would welcome an opportunity to participate in the work of the Sixth Committee at the fifty-sixth session of the General Assembly, in 2001, when the draft articles on State responsibility were scheduled to be adopted on second reading.

46. Mr. Sreenivasa RAO said that, as Mr. Pellet had pointed out, the Sixth Committee's new approach to its work made it possible for any special rapporteur to participate in the discussion of his topic. Since that was the

case, there was no need to designate more than one special rapporteur to represent the Commission and he proposed that the designee should be Mr. Rodríguez Cedeño.

47. The CHAIRMAN said that the assistance of any special rapporteur who was available at the fifty-fourth session of the General Assembly would be most welcome. If he heard no objection, he would take it that the Commission wished to adopt paragraph 11, with the insertion of the name of Mr. Rodríguez Cedeño.

It was so agreed.

Section D was adopted.

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

The draft report of the Commission on the work of its fifty-first session, as a whole, as amended, was adopted.

Letter from the United Nations High Commissioner for Refugees

48. The CHAIRMAN read out the following letter received from Mrs. Ogata, United Nations High Commissioner for Refugees:

I am pleased to refer to the work undertaken by the United Nations International Law Commission during its fifty-first session just completed in Geneva, during which the draft articles on Nationality of Natural Persons in relation to the Succession of States and related commentary have been adopted. As you are aware, my Office has been following the elaboration of these articles closely, and is pleased to have participated in consultations that concerned the problem of statelessness. Problems relating to nationality following the succession of States have been of major concern to UNHCR in the past decade, and many of our programmes in newly independent States centre on this issue. It is without doubt that the ILC's contributions towards the codification and progressive development of international law in the field of nationality, and on questions pertaining to the avoidance and reduction of cases of statelessness, are of great service to my Office in our work on these challenging issues.

As you will recall, there are many past examples of fruitful cooperation between UNHCR and the ILC. The ILC drafted the 1961 Convention on the Reduction of Statelessness, in which UNHCR is designated as a mediating body to which individuals and States may turn for assistance in resolving cases of statelessness. UNHCR participated in the conference which adopted the 1961 Convention and, as has been the case in the Commission's current work concerning State succession, has shared the benefit of our experience in legal and practical problems of statelessness which confront the Office regularly in the course of our work. In 1996 the General Assembly, by way of resolution 50/152, requested UNHCR to significantly expand its work in this field, by providing technical and advisory services on national and international law to States, and by undertaking other activities to promote the reduction and avoidance of statelessness. In support of these efforts, my Office has established special expertise in this field within the Department of International Protection, which I trust will facilitate our cooperation with the Commission in any future work on nationality questions.

Closure of the session

49. After the usual exchange of courtesies, the CHAIRMAN declared the fifty-first session of the International Law Commission closed.

The meeting rose at 1 p.m.