

Document:-  
**A/CN.4/SR.2659**

**Summary record of the 2659th meeting**

Topic:  
**Adoption of the report**

Extract from the Yearbook of the International Law Commission:-  
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clearly brought out the existence of three views within the Commission.

70. Mr. Sreenivasa RAO said that he endorsed Mr. Brownlie's proposal.

71. The CHAIRMAN suggested that the Rapporteur, together with the Special Rapporteur and members of the Commission who had expressed reservations regarding the third sentence, should endeavour to find a formulation to be submitted at a later meeting. If he heard no objection, he would take it that the Commission agreed to that suggestion.

*It was so agreed.*

Paragraph 33

*Paragraph 33 was adopted.*

Paragraph 34

72. Mr. ECONOMIDES proposed that, in order to restore a balance between the two schools of thought in the Commission, the expression "most members", which implied that there had been a majority and a minority, should be replaced by "other members", in the seventh sentence. He would also point out that, in the discussion, nine members had submitted a written proposal for article "X" which had read: "Diplomatic protection is a peaceful international institution precluding resort to the threat or use of force and to interference in the internal or external affairs of the State." That proposal, which was nowhere noted in the report, should appear somewhere. That, however, was a matter that fell to the Special Rapporteur.

73. Mr. SIMMA said that the whole of the seventh sentence should be recast, as the formulation "most members of the Commission had not taken a firm position on the Charter provisions" clumsily reflected the position of members, including his own and that of Mr. Brownlie, who had been of the opinion that it was necessary to keep to the issue of diplomatic protection and simply state that the question of the use of force did not fall within the topic.

74. Mr. BROWNLIE reaffirmed what he had said in connection with paragraph 32, namely, the text should more clearly reflect the existence of three schools of thought in the Commission, namely of the members who had endorsed article 2, those who had disapproved of article 2 and those whose position was too discreetly reflected in the text or had simply taken the view that the question of the use of force did not fall within the topic.

75. Mr. KAMTO said that a method should be found of recalling the very firm position of the nine members who had made the written proposal for article "X". Again, it was not acceptable to state, as did the fourth sentence of the paragraph, that "In all honesty, [the Special Rapporteur] could not, like his predecessor, contend that the use of force was outlawed in the case of the protection of nationals". It was the expression of an opinion that had to be counterbalanced by very clearly mentioning the view of the members who had firmly said that they were in favour of the prohibition of the use of force by States, even to pro-

tect their nationals abroad, which had been the meaning of the proposed article "X".

76. Mr. ROSENSTOCK pointed out that the paragraph set out the conclusions expressed by the Special Rapporteur. However, a straightforward sentence would be enough to settle the question of the three schools of thought which, according to Mr. Brownlie, had emerged in the Commission.

77. The CHAIRMAN said that consideration of paragraph 34 would be continued at a later meeting, so as to allow the Rapporteur, together with the Special Rapporteur, to review the formulation.

*The meeting rose at 1 p.m.*

## 2659th MEETING

*Tuesday, 15 August 2000, at 3.05 p.m.*

*Chairman: Mr. Chusei YAMADA*

*Present: Mr. Addo, Mr. Brownlie, Mr. Candioti, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kamto, Mr. Kusuma-Atmadja, Mr. Momtaz, Mr. Pellet, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Sepúlveda, Mr. Simma, Mr. Tomka.*

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

CHAPTER V. *Diplomatic protection (continued) (A/CN.4/L.594)*

B. *Consideration of the topic at the present session (continued)*

*Paragraph 32 (concluded)*

1. The CHAIRMAN said that, following informal consultations between the Rapporteur, the Special Rapporteur and other members, it was proposed that the third sentence should be split in two and should read: "However, some of the members who supported the second view, namely that the question of the use of force fell outside the scope of diplomatic protection, were of the view that the Special Rapporteur was correct in his interpretation of Article 51 of the Charter and that States would be entitled to use force in the exercise of the right to self-defence if their nationals' lives were at stake. Other

members who supported the second view took no position on the issue of the use of force”.

*Paragraph 32, as amended, was adopted.*

Paragraph 34 (*concluded*)

2. The CHAIRMAN said that, following consultations, it was proposed that the seventh sentence should read: “However, other members of the Commission had not taken a position on the Charter provisions ...”.

*Paragraph 34, as amended, was adopted.*

Paragraph 35

3. Mr. TOMKA suggested that the phrase “in the *Nottebohm* case” should be preceded by the words “by ICJ”.

*Paragraph 35, as amended, was adopted.*

Paragraphs 36 to 42

*Paragraphs 36 to 42 were adopted.*

Paragraph 43

4. Mr. DUGARD (Special Rapporteur) said that, in the discussion on article 1, some members had objected to a reference that singled out the Constitutions of Eastern European States. For consistency’s sake, therefore, the phrase “especially those of Eastern European countries” should be deleted.

*Paragraph 43, as amended, was adopted.*

Paragraph 44

*Paragraph 44 was adopted.*

Paragraph 45

5. Mr. TOMKA suggested that the word “modern” should be replaced by “contemporary”.

*Paragraph 45, as amended, was adopted.*

Paragraphs 46 to 53

*Paragraphs 46 to 53 were adopted.*

Paragraph 54

6. Mr. TOMKA said that the phrase in brackets, which read “established after the Kuwait-Iraq conflict”, was worded too neutrally for such a politically sensitive topic. He therefore suggested that the phrase should be deleted.

*Paragraph 54, as amended, was adopted.*

Paragraphs 55 to 61

*Paragraphs 55 to 61 were adopted.*

Paragraph 62

7. Mr. TOMKA said that States which had recently adopted legislation on granting nationality in the case of the dissolution of another State might take exception to the phrase “in an authoritarian manner”. Some more acceptable form of words should be found.

8. Mr. ECONOMIDES said that the paragraph reflected remarks that he had made. He had not used the word “authoritarian”, which indeed had an unfortunate ring. He suggested that “ex officio” would be a suitable alternative.

9. Mr. BROWNLIE suggested a neutral, non-judgemental expression from English law: “by operation of law”.

*It was so agreed.*

*Paragraph 62, as amended, was adopted.*

Paragraphs 63 and 64

*Paragraphs 63 and 64 were adopted.*

Paragraph 65

*Paragraph 65 was adopted with a minor editing change.*

Paragraph 66

*Paragraph 66 was adopted.*

Paragraph 67

10. Mr. TOMKA, supported by Mr. KUSUMA-ATMADJA, expressed a preference for rewording the phrase “even if all States did not recognize it”, which was ambiguous, to read “even if not all States recognized it”.

11. Mr. BROWNLIE said he had no objection to that part of the text as it stood, but in his opinion, the word “it”, in the same phrase, needed clarification. It should be replaced by “the institution”.

*Paragraph 67, as amended, was adopted.*

Paragraphs 68 to 75

12. Mr. SIMMA said he found the whole summary of the debate on article 6 unsatisfactory. As the Special Rapporteur had pointed out in his concluding remarks, in paragraph 75, there had been two points of view, both backed by strong authority, yet in the summary there was a marked lack of balance between the two. The argument in favour of the applicability of the rule that the State of dominant nationality might exercise diplomatic protection against another State of nationality had been given short shrift, whereas two thirds of the summary were devoted to the opposite view, supported by verbatim quotations from the 1930 Hague Convention. As he recalled,

the Commission had been more or less evenly divided, with equally strong feeling on both sides.

13. Mr. ECONOMIDES said he concurred with Mr. Simma. There had been strong opposition to the principle contained in article 6, yet it was reflected only in paragraph 72, and weakly at that. He therefore suggested that paragraph 69 should be followed by a new paragraph stating the opposite case, with all the arguments to support it. Whatever approach was adopted, the paragraphs would need to be re-examined in order to establish a better balance that would faithfully represent two very different schools of thought.

14. Mr. GOCO said that, if that course was followed, there was a danger the whole summary of the debate on article 6 would need to be rewritten. He would favour considering the summary on a paragraph-by-paragraph basis.

15. Mr. SIMMA said he agreed with Mr. Economides that there was an imbalance, but in his opinion it was in the opposite direction. Paragraph 69 and the beginning of paragraph 70 contained a few phrases in support of the view that the principle contained in article 6 should apply, but from then on the arguments were all in support of the opposing view. Paragraph 72, in its entirety, constituted an argument against the view of the Special Rapporteur: despite the examples cited, the “situation was not so simple”; after which a range of arguments against the principle was adduced. Extensive drafting changes were required. There was no point in going through the text paragraph by paragraph.

16. The CHAIRMAN asked whether Mr. Simma envisaged a wholesale redrafting of paragraphs 68 to 74 or whether he considered that the balance could be restored by a new paragraph.

17. Mr. SIMMA said that the essence of the debate had been so misrepresented that the addition of a paragraph would not suffice to rectify the imbalance. He suggested that those interested could meet informally and put forward an alternative text.

18. Mr. KABATSI requested clarification as to whether the reference in paragraph 75 to “strong authority” related to legal authority or to the number of members supporting each point of view.

19. Mr. DUGARD (Special Rapporteur) said that he had had legal authority in mind. He would be happy to have the text amended to reflect that.

20. Mr. KABATSI said that there was no need to add the word “legal”, so long as there was no implication of more support for one side than the other.

21. Mr. BROWNLIE suggested that, as in the case of paragraph 32, paragraphs 68 to 74 should be remitted to the Special Rapporteur, together with the Rapporteur and other members, to redraft as necessary in the light of what had been said.

22. The CHAIRMAN said he concurred. Some members wanted a review of all the paragraphs relating to article 6 and that could not be done in plenary. The Rapporteur should undertake consultations with the Special Rapporteur

and interested members. Meanwhile, the Commission should defer adoption of the paragraphs.

23. Mr. DUGARD (Special Rapporteur) said that there was a sharp conflict of opinion. Mr. Simma—rightly, in his view—considered that more attention should be paid to the view that had been finally adopted and approved by the informal consultations, whereas Mr. Economides thought otherwise. The minority view had, perhaps, been given excessive prominence in order to avoid the suggestion that it had been overlooked. He therefore sought guidance on how the paragraphs should be redrafted.

24. Mr. ECONOMIDES said that paragraphs 68 to 74 were based on the summary record. However, the views of those supporting the classical rule of the non-responsibility of the State in respect of its own nationals were not properly reflected until paragraph 72. He therefore suggested a paragraph 69 bis along the following lines:

“Other members, on the other hand, supported the classical rule of the non-responsibility of the State in respect of its nationals, adducing a number of arguments that appear in the paragraphs below, particularly the fact that article 4 of the 1930 Hague Convention, which remains valid, provides that ‘A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.’”

The rest of the paragraphs dealing with article 6 could then remain unchanged.

25. Mr. SIMMA said that the last sentence of paragraph 72, for example, did not reflect both sides of the debate that had taken place and his own contribution to it. The sentence should also state that the position expressed therein had been called into question. Mr. Economides’ constructive proposal appeared to offer a way forward.

26. Mr. TOMKA said that the best course would be to ask the Rapporteur, the Special Rapporteur and interested members to prepare a new text, on the basis of the summary records, for consideration at a later meeting.

27. Mr. GOCO endorsed Mr. Tomka’s remarks, but thought that Mr. Economides’ proposal might profitably be discussed at the current meeting.

28. The CHAIRMAN said that the problem seemed to be one that could not be solved at the current meeting. Accordingly, if he heard no objection, he would take it that the Commission wished to adopt paragraph 75 without amendment, and to defer consideration of paragraphs 68 to 74 pending further consultations between the Rapporteur, the Special Rapporteur and interested members.

*It was so agreed.*

*Paragraph 75 was adopted.*

Paragraphs 76 to 80

*Paragraphs 76 to 80 were adopted.*

Paragraph 81

29. Mr. TOMKA drew attention to an apparent inconsistency between the last two sentences of paragraph 81. Given that the first of the two sentences cited jurisprudence of the Iran-United States Claims Tribunal, the phrase “even though practice and jurisprudence on the subject were non-existent” should be deleted from the second sentence, which would thus end with the words “. . . follow that course”.

*Paragraph 81, as amended, was adopted.*

Paragraphs 82 to 86

*Paragraphs 82 to 86 were adopted.*

Paragraph 87

30. Mr. RODRÍGUEZ CEDEÑO (Rapporteur) said that the remarks concerning UNHCR were irrelevant to the tenor of paragraph 87 and should be relocated, either at the end of the paragraph or in a separate paragraph. Better still, they should be deleted altogether since, in his view, UNHCR had no authority to take up complaints on behalf of refugees with the Government of the country concerned, and the “protection” it exercised was very different from diplomatic protection.

31. Mr. SIMMA said that, if the matter relating to UNHCR was deleted, the balance of paragraph 87 would be disrupted, as the differing views referred to in its first sentence would no longer be represented.

32. Mr. RODRÍGUEZ CEDEÑO (Rapporteur) said that the only way to preserve the balance of paragraph 87 would be to redraft it so as to link the opening and concluding sections while eliminating the central section, which had absolutely no bearing on the remainder of the paragraph.

33. The CHAIRMAN said he would take it that the Commission wished to defer consideration of paragraph 87.

*It was so agreed.*

Paragraph 88

34. Mr. SIMMA said that, in the interests of consistency, paragraph 88 should, like other paragraphs reflecting the Special Rapporteur’s views, open with a formulation such as “The Special Rapporteur was of the view that . . .”.

*Paragraph 88, as amended, was adopted.*

Paragraph 89

*Paragraph 89 was adopted with minor editing changes.*

Paragraph 90

*Paragraph 90 was adopted.*

## CHAPTER VII. *Reservations to treaties* (A/CN.4/L.596 and Add.1 4)

### A. Introduction (A/CN.4/L.596)

Paragraphs 1 to 15

35. Mr. PELLET (Special Rapporteur) said that paragraphs 10 to 14 contained many details already reflected in the Commission’s report on its previous session, and which were thus superfluous. Accordingly, those paragraphs could be very substantially compressed. Most of paragraph 10, much of paragraph 11 and all of paragraph 12 except its first sentence could be deleted. The first three sentences of paragraph 13 should be retained, and the remainder, as well as the whole of paragraph 14, deleted.

*Paragraphs 1 to 15, as amended, were adopted.*

*Section A, as amended, was adopted.*

### B. Consideration of the topic at the present session (A/CN.4/L.596 and Add.1)

Paragraphs 16 to 18 (A/CN.4/L.596)

*Paragraphs 16 to 18 were adopted.*

Paragraphs 19 to 23 (A/CN.4/L.596/Add.1)

*Paragraphs 19 to 23 were adopted.*

Paragraph 24

*Paragraph 24 was adopted with a minor editing change to the French version.*

Paragraph 25

36. Mr. PELLET (Special Rapporteur) said that the footnotes to chapter VII merely referred the reader to the text of the guidelines in his fifth report (A/CN.4/508 and Add.1–4). The text of the draft guidelines should be reproduced *in extenso* in the footnotes, in line with the procedure adopted in other chapters of the report.

37. The CHAIRMAN said that the secretariat would take note of the Special Rapporteur’s request.

*Paragraph 25 was adopted.*

Paragraphs 26 to 29

*Paragraphs 26 to 29 were adopted.*

Paragraph 30

38. Mr. SIMMA said that, unlike other chapters of the report, much of chapter VII, with its wealth of substantive footnotes, resembled a “mini-report” by the Special Rapporteur.

39. Mr. PELLET (Special Rapporteur) said that the chapter had intentionally been drafted in the form of a “mini-report” in order to spare him the time-consuming task of reintroducing that part of his report—which had been introduced but not debated at the current session—at the next session of the Commission. The format of chapter VII should therefore be left unchanged.

40. Mr. ECONOMIDES, supporting the Special Rapporteur’s position, said it was extremely helpful for the Commission to have detailed explanations of the draft guidelines in its report, a practice that might usefully be followed in other chapters of the report.

41. Mr. TOMKA said that the best course might be to retain the existing format of chapter VII, while urging future Rapporteurs and the secretariat to bear Mr. Simma’s comments in mind when drafting reports of the Commission on subsequent sessions.

*It was so agreed.*

*Paragraph 30 was adopted.*

Paragraphs 31 and 32

*Paragraphs 31 and 32 were adopted.*

Paragraph 33

42. Mr. KAMTO expressed the opinion that more than one case should be cited in the footnote to the second sentence, since the body of the text spoke of “a number of cases”.

43. Mr. TOMKA suggested that possibly the difficulty could be overcome by inserting “e.g.” between “Cf.” and “Swiss”.

*Paragraph 33, as amended, was adopted.*

Paragraph 34

*Paragraph 34 was adopted.*

Paragraph 35

44. Mr. PELLET (Special Rapporteur), Mr. GAJA and Mr. ROSENSTOCK drew attention to some drafting errors. The words “but also” in the parentheses should read “as well as”. The sentence should then go on to read “... tacit consent of the other contracting parties to the formulation of the late reservation ...”.

*Paragraph 35, as amended, was adopted.*

Paragraphs 36 and 37

*Paragraphs 36 and 37 were adopted.*

Paragraph 38

45. Mr. PELLET (Special Rapporteur) said that, in the French version, the phrase *S’agissant par la suite des déclarations interprétatives* should be deleted.

*Paragraph 38, as amended in the French version, was adopted.*

Paragraph 39

*Paragraph 39 was adopted with minor editing changes to the French version.*

Paragraph 40

*Paragraph 40 was adopted.*

Paragraph 41

46. Mr. HAFNER and Mr. SIMMA said that, while the adoption of the guidelines had been surrounded by lengthy discussions, not a single line of the report was devoted to the discussions.

47. Mr. PELLET (Special Rapporteur) said he declined all responsibility for the drafting of the report. The Rapporteur had, however, rightly followed customary practice. Draft guidelines which had been adopted were not published until the commentaries were issued. They generally reflected the discussion. The situation might be regrettable, but no previous Commission report had ever contained both the commentaries and a summary of the discussion. Once in the past, he had seen to it that his guidelines had not been published, so that the discussion could be included in the report. Since he had taken the trouble to draft commentaries in the document under consideration, there was no summary of the debate.

48. Mr. SIMMA said he bowed to the facts, but the Commission had been faced with a special situation at the current session. It had examined the text of a proposal by a Special Rapporteur for the very first time and had adopted part of it, all within one session, but nowhere in the report was there any record of the Commission’s thinking.

49. Mr. PELLET (Special Rapporteur) said that no one was being asked to approve anything that had not been discussed. He reiterated that the Rapporteur had merely followed normal practice.

50. Mr. TOMKA said that, as far as he remembered, at the previous session, when the draft articles on nationality of natural persons in relation to the succession of States had been adopted in the form of a declaration and accompanied by commentaries, the report had not included a record of the discussion which had taken place. Perhaps the secretariat could refresh the members’ memory about the procedure to be followed.

51. The CHAIRMAN emphasized that there was no reason to depart from the Commission’s usual practice. While he appreciated Mr. Simma’s concerns, it was necessary to restrict the length of the report.

*Paragraph 41 was adopted.*

*Section B, as amended, was adopted.*

**C. Text of the draft guidelines on reservations to treaties provisionally adopted by the Commission on first reading (A/CN.4/L.596/Add.2-4)**

1. TEXT OF THE DRAFT GUIDELINES (A/CN.4/L.596/ADD.2)

Paragraph 1

52. Mr. PELLET (Special Rapporteur) asked if it would be possible to include a footnote indicating that the commentaries to the draft guidelines adopted by the Commission at its fifty-first session could be found in the report to the General Assembly on the work of its fifty-second session.

*It was so agreed.*

*Paragraph 1, as amended, was adopted.*

2. TEXT OF THE DRAFT GUIDELINES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-SECOND SESSION (A/CN.4/L.596/ADD.3-4)

53. Mr. HAFNER said that perhaps a paragraph should be inserted at the beginning of section 2 to reflect the fact that the Commission was adopting commentaries.

54. The CHAIRMAN said that a paragraph would be inserted accordingly.

*Commentary to guideline 1.1.8 (A/CN.4/L.596/Add.3)*

55. Mr. SIMMA asked what was meant by the first sentence of paragraph (5).

56. Mr. KUSUMA-ATMADJA said that he understood it to be a reference to other conventions which did preclude reservations, such as the conventions on the law of the sea.

57. Mr. SIMMA asked whether the sentence should not read "In fact, the Vienna Conventions do not preclude the making of reservations not on the basis of an authorization implicit in the general international law of treaties, as codified in articles 19 to 23 of the 1969 and 1986 Vienna Conventions, but on the basis of specific treaty provisions".

58. Mr. PELLET (Special Rapporteur) said he agreed to Mr. Simma's rendering of the sentence.

59. Mr. TOMKA proposed the deletion of footnote 12. After all, who was to do the verifying?

*It was so agreed.*

60. Mr. GAJA queried the meaning of paragraph (15). Perhaps the last sentence could be altered to make it clear that the clauses in question might or might not be reservations.

61. Mr. ROSENSTOCK said that, as currently worded, the second sentence seemed to rule out the possibility that clauses offering a choice between provisions of a treaty were not reservations, which was not what was meant. He

proposed that the word "not" should be transposed from the phrase "are not reservations" and placed earlier in the sentence to read: "... so as not to imply that all clauses that offer ...".

62. Mr. TOMKA pointed out that, according to paragraph (15), options were sometimes reservations and sometimes they were not. That conflicted with paragraph (13) and contradicted draft guideline 1.1.8, both of which stated, directly or by reference to the 1969 and 1986 Vienna Conventions, that options were reservations. Paragraph (15) should be deleted.

63. Mr. ECONOMIDES said he agreed with Mr. Gaja that paragraph (15) was somewhat abstruse. However, an attentive reading revealed a distinction between the situation described in article 17 of the 1969 and 1986 Vienna Conventions, when options in some cases could constitute reservations, and the situation in which such clauses were not reservations. Paragraph (15) should be retained unchanged.

64. Mr. KUSUMA-ATMADJA said he favoured retention of the paragraph or deletion of the entire second sentence, but he was opposed to minor amendments to the second sentence.

65. Mr. PELLET (Special Rapporteur) said the idea behind paragraph (15) was that article 17 of the 1969 and 1986 Vienna Conventions implied that acceptance of a treaty could be partial on the basis either of a reservation or of other techniques, which meant that clauses permitting partial participation could either be reservations or they could not. If that was what Mr. Rosenstock's amendment indicated, it was acceptable.

66. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt the amendment proposed by Mr. Rosenstock.

*It was so agreed.*

*Paragraph (15), as amended, was adopted.*

*The commentary to guideline 1.1.8, as amended, was adopted.*

*Commentary to guideline 1.4.6 [1.4.6, 1.4.7]*

67. Mr. KABATSI suggested an editing correction to paragraph (5).

68. Mr. HAFNER drew attention to subparagraph (a) and requested clarification of the words "generally speaking".

69. After a brief discussion in which Mr. HAFNER, Mr. PELLET (Special Rapporteur) and Mr. ROSENSTOCK took part, the CHAIRMAN suggested that the words "generally speaking" should be replaced by "in most cases".

*It was so agreed.*

*Paragraph (5), as amended, was adopted.*

70. Mr. ECONOMIDES, supported by Mr. SIMMA, said that, in the last sentence of paragraph (9), the second use of the word “optional” should be corrected to read “compulsory”.

71. Mr. BROWNLIE said that the wording was correct as it stood: the jurisdiction of ICJ was optional at the stage of proceedings described in the paragraph. Once that jurisdiction had been accepted, it was compulsory.

72. Mr. TOMKA suggested deletion of the phrase “optional clause recognizing the optional”.

*It was so agreed.*

*Paragraph (9), as amended, was adopted.*

*The commentary to guideline 1.4.6 [1.4.6, 1.4.7], as amended, was adopted.*

*Commentary to guideline 1.4.7 [1.4.8]*

73. Mr. SIMMA queried the use of the word “with” in the first sentence of paragraph (12).

74. The CHAIRMAN suggested that the words “with reservations” should be replaced by the phrase “between these statements and reservations”.

*It was so agreed.*

*Paragraph (12), as amended, was adopted.*

*The commentary to guideline 1.4.7 [1.4.8], as amended, was adopted.*

*Commentary to guideline 1.7 (A/CN.4/L.596/Add.4)*

75. Mr. PELLET (Special Rapporteur) and Mr. SIMMA drew attention to some editing changes required at the beginning of the commentary.

76. Mr. ECONOMIDES said that the end of the last sentence in paragraph (1) might lend itself to the wrong interpretation. He proposed that the phrase “while safeguarding the ‘hard core’ of the treaty” should be deleted.

*It was so agreed.*

*Paragraph (1), as amended, was adopted.*

77. Mr. HAFNER asked whether the “treaty clauses” referred to in the first sentence of paragraph (2) were clauses entitling States to conclude treaties or whether they were treaty provisions themselves. If the latter was the case, the word “treaties” would be preferable to “treaty clauses”.

78. Mr. PELLET (Special Rapporteur) said that, if it made the meaning clearer, the words “treaty clauses” could be replaced by the words “clauses in the treaty itself”.

*It was so agreed.*

*Paragraph (2), as amended, was adopted.*

*The commentary to guideline 1.7, as amended, was adopted.*

*The meeting rose at 6 p.m.*

## 2660th MEETING

*Wednesday, 16 August 2000, at 10 a.m.*

*Chairman: Mr. Chusei YAMADA*

*Present: Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kamto, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma.*

### **Programme, procedures and working methods of the Commission, and its documentation (A/CN.4/504, sect. E)**

[Agenda item 8]

#### REPORT OF THE CHAIRMAN OF THE PLANNING GROUP

1. The CHAIRMAN invited Mr. Kamto, Chairman of the Planning Group, to report on the work of the Planning Group.

2. Mr. KAMTO (Chairman of the Planning Group) said that the Planning Group had held four meetings at the Commission’s current session. It had discussed section E of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-fourth session, entitled “Other decisions and conclusions of the Commission” (A/CN.4/504, paras. 181 to 188) and had also taken account of paragraphs 8 to 11 of General Assembly resolution 54/111 of 9 December 1999. It had decided to re-establish the Working Group on the long-term programme of work and the working group on split sessions. It had also had before it a proposal submitted by Mr. Pellet entitled “Elections to the International Law Commission” (ILC(LII)/PG/WP.1).

3. Having considered the reports of the two working groups at its meeting on 10 August 2000, the Planning Group had decided, first, to adopt the report of the Working Group on the long-term programme of work (ILC(LII)/WG/LT/L.1 and Add.1), replacing the words “might be worth” by the words “are worth” in the first