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Summary record of the 2741st meeting

Topic:

Extract from the Yearbook of the International Law Commission:-
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41. Mr. PELLET said that, while that practice seemed reasonable in the case of reports of the Drafting Committee on texts adopted on first reading, since the views expressed were reflected in the commentaries, it seemed completely unreasonable in the case of the reports of working groups: such a practice would inevitably prompt requests from members for corrections to the report. Regardless of what the practice might have been in the past, he was hostile to its continuation.

42. The CHAIR said that view could be reflected in the report of the Commission when it adopted the chapter of the report on the topic under consideration. If he heard no further objections, he would take it that the Commission agreed to adopt the report of the Working Group on the Responsibility of International Organizations.

It was so agreed.

The meeting rose at 12.15 p.m.

2741st MEETING

Tuesday, 6 August 2002, at 10 a.m.

Chair: Mr. Robert ROSENSTOCK

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candioti, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kamto, Mr. Kateka, Mr. Kemicha, Mr. Koskenniemi, Mr. Mansfield, Mr. Momtaz, Mr. Niehaus, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Sepúlveda, Mr. Simma, Mr. Tomka, Ms. Xue.

The fragmentation of international law: difficulties arising from the diversification and expansion of international law (A/CN.4/L.628 and Corr.1)¹

[Agenda item 8]

REPORT OF THE STUDY GROUP

1. The CHAIR invited the Chair of the Study Group on the Fragmentation of International Law to introduce the Study Group's report.

¹ Reproduced in *Yearbook ... 2002*, vol. II (Part Two), chap. IX, sect. C.

2. Mr. SIMMA (Chair of the Study Group on the Fragmentation of International Law) said that, in the course of the last quinquennium, the Commission's Working Group on the long-term programme of work had identified the topic "Risks ensuing from fragmentation of international law" as a subject that might be suitable for further study. Mr. Gerhard Hafner had been assigned the task of conducting a feasibility study on the issue. At the Commission's fifty-second session (2000), he had submitted a document that formed the starting point for the consideration of the topic at the current session.²

3. The Study Group, composed of most members of the Commission, had met four times during the session. Its report consisted of two parts: a summary of the discussions and a set of recommendations. One of the main questions that the members of the Study Group had considered was whether the topic of the fragmentation of international law was suitable for study by the Commission; they had also considered the potential scope of the topic and the approach to be adopted. In the end, they had supported taking up the topic, considering that it was an area where the Commission could provide useful guidance, at least in relation to specific aspects of the issue.

4. From the beginning, the members of the Study Group had recognized that the topic was different in nature from others and might require an original approach. They had agreed, however, that fragmentation was not a new development, because international law was inherently the law of a fragmented world. Fragmentation was also the natural consequence of the expansion of international law into areas that were sometimes entirely new. The Study Group had therefore considered that the Commission should not approach fragmentation as a new phenomenon, as that could distract from the existing mechanisms that international law had developed to cope with the challenges arising from fragmentation.

5. The Study Group had also thought it important to highlight the positive aspects of fragmentation, which could be seen as a sign of the vitality of international law. The proliferation of rules, regimes and institutions and the increased diversity of voices were not necessarily negative and, on the contrary, meant that the scope of international law was widening.

6. Regarding procedural issues, the members of the Study Group had questioned whether the topic fell within the Commission's mandate and whether the Commission would have to seek the approval of the Sixth Committee of the General Assembly before taking up the topic, but they had concluded that the necessary support could be obtained.

7. The question of the title of the topic had given rise to considerable discussion because it had been felt that the title of the Hafner report, "Risks ensuing from fragmentation of international law", depicted the subject matter in too negative a light. The word "fragmentation" denoted certain undesirable consequences of the expansion

² See *Yearbook ... 2000*, vol. II (Part Two), annex, item 5, p. 143.

of international law, which the Commission should try to counter. That effort would justify the study of the topic.

8. The issue of methodology had also given rise to lengthy discussions. It had been agreed that the topic was not suitable for codification in the traditional format of draft articles drawn up by a special rapporteur and accompanied by commentaries. Several members had suggested that the work should focus on specific themes and identify certain areas where conflicting rules of international law existed in order to, if possible, find solutions to those conflicts. At the other end of the spectrum, a more exploratory approach had been proposed, confining work to recognizing the importance of fragmentation as a problem of international law without, at that stage, establishing the methodology or seeking specific results.

9. The members of the Study Group had identified several areas that were not suitable for study by the Commission, such as questions of the creation of international judicial institutions and the relationship among such institutions. They had considered, however, that, to the extent that the same or similar rules of international law could be applied differently by judicial institutions, the problems that arose from such divergencies should be addressed. The members had also agreed that drawing analogies to the domestic legal system might not always be appropriate because it introduced a concept of hierarchy that was not present at the international legal level and should not be superimposed. It had been agreed that, in international law, there was no final body to resolve conflicts. It had also been acknowledged that the Commission should not act as a referee in relations between institutions, even though it could usefully address issues of communication among such institutions.

10. In practical terms, several members had suggested that, at the beginning of each annual session, the Commission should organize a seminar in order to gain an overview of the practice of international institutions and States and provide a forum for dialogue and potential harmonization. Other members had proposed going even further in that direction by organizing more institutionalized and periodical meetings similar to some that already existed, such as the meeting of chairpersons of human rights treaty bodies and the annual meeting of national legal advisers at the United Nations. Another suggestion had been that a questionnaire should be prepared which would provide guidance for the research into existing coordination mechanisms.

11. With regard to the final result of the Commission's work, and even though it was a little too soon to discuss the matter, it had been decided that a study or research report should be drafted, although agreement had to be reached on the exact format and scope of any such report.

12. Referring to the second part of the report, entitled "Recommendations", he indicated that, in the light of the discussion on the title of the topic and the negative connotation of the word "fragmentation", it had been proposed that the Study Group should adopt the title "Difficulties arising from the diversification of international law". Some members of the Study Group had also been

in favour of an alternative: "Difficulties arising from the expansion and diversification of international law".

13. With regard to content, the Study Group recommended that a series of studies on specific aspects of the topic should be carried out and submitted to the Commission for its consideration and appropriate action. The purpose of such studies would be to assist international judges and practitioners in coping with the consequences of the diversification of international law.

14. The Study Group had chosen five main topics for study that had in common that they were all topics linked to earlier work done by the Commission, and they could build on and further develop earlier texts. The aim would be to provide a "toolbox"—suggestions and practical means for solving problems arising from the incongruities and conflicts that might exist between existing rules and regimes. The study topics chosen were listed in paragraph 21, subparagraphs (a) to (e), of the Study Group's report. The title of the first topic was "The function and scope of the *lex specialis* rule and the question of 'self-contained regimes' ". Those elements were interesting because both *lex specialis* and "self-contained regimes" could provide a ready-made answer to the problems of conflicts of law by creating a kind of "independent" domain outside the ordinary rules of international law. That study could be submitted to the Commission at its next session.

15. The other study topics were: "The interpretation of treaties in the light of 'any relevant rules of international law applicable in the relations between the parties' (article 31 (3) (c) of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and 'contemporary concerns of the community of nations'" (that wording had been taken from the *Shrimp Products* case, submitted to the WTO Appellate Body); "The application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties)"; "The modifications of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties)"; and "Hierarchy in treaty law: *jus cogens*, obligations *erga omnes*, Article 103 of the Charter of the United Nations, as conflict rules". Although *jus cogens* and obligations *erga omnes* had already been the subject of numerous studies, the idea in that context would be to consider such "super rules" as rules designed to resolve conflicts between different systems.

16. Now that the Study Group's report had been introduced, the Commission should discuss it and, if necessary, amend it, adopt it and incorporate it into its own report to the General Assembly.

17. Mr. KATEKA, commending the Study Group on its very clear report, said he regretted that it had not defined the word "fragmentation", although he himself did not object to it. As the report had stressed, fragmentation was not a new phenomenon and denoted an increased diversity of voices and a polycentric system, which had positive aspects. The new title contained in the Study Group's recommendations seemed more appropriate than the one proposed by Mr. Hafner, but he did not agree with the introduction of the word "expansion".

18. With regard to the methodology and the format of the work of the Study Group, an evolving methodology would be the most appropriate. In that respect, the Commission should not decide *a priori* that it would not study the risks arising from the proliferation of international judicial institutions. However, it might be wise to refrain from drawing analogies to domestic legal systems, in view of the lack of hierarchy in systems of international law.

19. As for the outcome of the Commission's work, it was preferable to be cautious, because the topic was unusual and the ramifications would become clear only as work progressed.

20. At the practical level, he did not object to the idea of organizing seminars, but it did not seem necessary to hold one during each of the Commission's annual sessions. He agreed with the study topics chosen by the Group and also the "toolbox" approach to the solution of practical problems. However, with regard to the second topic, he was not sure that it was necessary to refer in its title to the *Shrimp Products* case, submitted to the WTO Appellate Body; a reference of that kind did not belong in a title. He also regretted that the study of extradition treaties and human rights norms mentioned in the Study Group's initial draft had not been included in the list of topics.

21. Despite those comments, he was fully in favour of adopting the Study Group's report.

22. Mr. FOMBA said that the Study Group had successfully carried out its task and that, by and large, he endorsed its preliminary conclusions. In particular, he agreed that the topic fell within the Commission's mandate and that the study should be aimed at countering the undesirable consequences of the expansion of international law into new areas.

23. As for methodology, it was obvious that the subject was not suitable for codification in the traditional format of draft articles. That being the case, he preferred an approach focusing on specific themes as opposed to a broader, more exploratory approach. As to the areas that the Commission should not include within the scope of the study, on the whole he endorsed the approach taken by the Study Group, although he wondered whether all analogies with domestic legal systems should be entirely avoided. In any case, the Commission should be very careful in dealing with such matters. In addition, he was not sure that the suggestion that matters relating to the application of international law should be excluded from the study was quite appropriate, in view of the very purpose of the study, which was to solve the practical problems caused by incompatibility and conflicts between various legal rules and regimes.

24. As for the possible outcome of the Commission's work, he saw no reason why seminars should not be organized at the beginning of the Commission's annual sessions or more institutionalized meetings envisaged, as long as those initiatives pursued a single objective.

25. Finally, he endorsed the five topics that the Study Group recommended to the Commission for its consideration and the proposal that, as a first step, the Chair of the Study Group should undertake a study on the func-

tion and scope of the *lex specialis* rule and the question of "self-contained regimes".

26. Ms. ESCARAMEIA said that she agreed with the report of the Study Group on the whole. She would, however, have liked to see the word "expansion" included in the title, since that would give a sense of the vitality of international law, which now encompassed situations that had previously pertained only to internal law.

27. She welcomed the inclusion in paragraph 14 of the sentence stating that, to the extent that the same or similar rules of international law could be applied differently by judicial institutions, the problems that could arise from such divergencies must be addressed. She also appreciated the revision of paragraphs 21 and 22 of the Study Group's draft report to give a better sense of the methodological approach to be taken by the Commission.

28. While the Commission must indeed begin by studying substantive law and the relationship between different types of substantive law, she thought that it must also address the institutional background for the application of substantive law and, in particular, try to find out what problems were encountered by existing bodies, including treaty bodies, and how they solved them.

29. Mr. BROWNLIE, commending the Chair of the Study Group on his report, said that he was pleasantly surprised by the rapidity with which consensus had been achieved on the document, which faithfully reflected the views expressed in the Study Group and was drafted judiciously, so as not to alarm the Sixth Committee. The new title of the study was better than the original: after all, the word "fragmentation" had a negative connotation, but it would probably continue to be used for the sake of convenience.

30. The idea of the "toolbox" was somewhat bland but would make it easier to tackle essential problems.

31. He regretted the fact that no reference was made in paragraph 11 of the Study Group's report to extradition treaties and human rights standards, a problem that was at the heart of the subject of fragmentation. It would be recalled in that connection that, in the United Kingdom, in its 1999 decision in the *Pinochet* case, the House of Lords had decided by a six-to-one majority to strip Senator Pinochet of his immunity, thereby giving precedence to developments in international criminal law. That body had protected itself by emphasizing that the decision had concerned an ex-Head of State, but all the arguments used would actually apply to incumbent Heads of State. That decision showed that there was a fundamental incompatibility between the present content of international criminal law and that of the law relating to the immunity of States and Heads of State. It would be unfortunate if the Commission did not even mention such an important example of fragmentation.

32. On self-contained regimes, the Commission must be very careful not to designate regimes for which there was no proof that they could be described as such. There was no evidence, for example, that the word applied to human rights. He had worked on many cases before the European Commission on Human Rights and the European Court

of Human Rights concerning Cyprus. Most of the law of human rights was of course, treaty law, which was part of general international law. In the cases he had mentioned, when incidental questions had arisen, such as questions of statehood or State responsibility, they had been solved by reference not to a self-contained regime of human rights but to principles of general international law on those subjects. Of course, self-contained regimes existed, and many of them were bilateral treaty regimes governing relations between States, but one should not make a presumption in favour of a regime's being self-contained. The Commission would, moreover, have to elaborate on the concept of the self-contained regime.

33. In the 1950s and early 1960s, to express support for human rights had been considered to be an attack on the colonial system, whose partisans spoke of interference in the internal affairs of States. The United Kingdom and France had been slow to enter into the European machinery for monitoring human rights precisely because of the colonial question. Standards for the protection of human rights were not Eurocentric; they had now developed as a part of general international law. It was therefore necessary to be careful not to speak of fragmentation when it did not exist. Even if one accepted that it might be absolutely necessary for human rights approaches to involve certain special outlooks on general international law, that did not mean that, in general, human rights standards had become a self-contained regime.

34. Mr. GALICKI said that, like Ms. Escameia, he regretted the fact that the title did not mention the expansion of international law. International law had now expanded its scope into new fields, whether social affairs or international relations. The Commission might be missing something if it failed to study that development.

35. Mr. SIMMA (Chair of the Study Group on the Fragmentation of International Law) said that he did not remember why the reference in paragraph 11 to extradition treaties and human rights norms had been deleted. He nevertheless thought it preferable at the current stage not to "politicize" the exercise by taking up subjects that might give rise to controversies. The "toolbox" approach was admittedly a little bland, but it had the advantage of avoiding such controversies. For example, it would be unwise to start off the work on the fragmentation of international law by addressing contentious issues, such as ICJ's judgment of 2002 in the *Arrest Warrant* case, in which it had clearly pronounced itself in favour of the old established law of immunity of foreign ministers from criminal prosecution. He would prefer not to take such an approach at the outset because it presupposed a value choice. The issue was what values were to be granted to human rights, what place they were to have in the hierarchy of values. In a sense, those questions might have to do with the topic suggested for study in paragraph 21 (e) of the Study Group's report. Nevertheless, he thought that it would be better to take a pragmatic approach and start out with technical issues, to see how things developed and leave controversial issues for a later stage.

36. With regard to self-contained regimes, he, too, believed that one should not presume that a given regime was self-contained, quite the contrary. The view that human rights were a self-contained regime was based on a

very specific political view of human rights, which, fortunately, no longer prevailed, although, in certain cases, such as that of WTO, references to State responsibility were considered to be out of place.

37. Mr. BROWNLIE said his comment on paragraph 11 had been that it would be a good thing if the report were to indicate that some members had had that point of view. He had not been making a substantive point.

38. Mr. SIMMA (Chair of the Study Group on the Fragmentation of International Law) said it was true that some members had referred to the conflict between extradition treaties and human rights norms, and that a few words to that effect could be added to paragraph 11.

39. The CHAIR said that members would be able to make specific proposals on that point when the Commission came to adopt the report of the Study Group paragraph by paragraph.

40. Mr. KOSKENNIEMI said that, when the Commission had started to debate the topic, there had been considerable uncertainty regarding the results of its work. A number of speakers in the Sixth Committee had voiced concern that the topic had no limits, and that the Commission might engage in debates that were of purely academic relevance and of doubtful practical significance, while not addressing some of the most important aspects of contemporary political and institutional developments. The report of the Study Group should dispel those fears. The question of the diversification of international law reflected some of the most interesting and important developments in the field of international institutional law. That diversification of law was certainly technical, but it also and above all reflected different political preferences. In that regard, the preferences of a body such as WTO were not those of a human rights body, and the preferences of experts in international criminal law were not identical with the preferences of the generalists in ICJ. Ambiguity was in any case inherent in the subject, and the current title established a balance between "positivists" and "negativists". Some members of the Sixth Committee had noted that the Commission itself represented an aspect of the diversification of international law and had expressed fears that the Commission would see itself as a kind of supreme court arbitrating in institutional conflicts that had arisen between institutions such as ICJ, the International Tribunal for the Former Yugoslavia and WTO. In a nutshell, they feared that the Commission would become embroiled in institutional politics or would engage in interminable abstractions about normative hierarchies. Paragraphs 14 and 16 of the report of the Study Group made it clear that the Commission did not intend to engage in institutional politics, while paragraph 15 showed that it did not think of itself as a constitutional convention that would establish a hierarchy through which conflicts between, for example, human rights experts, trade experts, immunity experts and generalists could be solved. The Commission had chosen an approach whereby its work in that field would be based on its previous work. In a sense, the Commission had been able to present itself to the international community as a guardian of the 1969 Vienna Convention, and, having been the originator of that Convention, it could take on something of the role of "grandfather" and could pronounce with some authority on its interpretation. Further-

more, most of the topics proposed in paragraph 21 of the report related to that Convention. The studies proposed could lead to guidelines or other recommendations.

41. The proposal made in the Study Group to conduct a separate study on conflicts of interpretation that might arise out of the jurisprudence of different international organs had not been included in the report because the Commission was not in a position to articulate a hierarchy of values that could authoritatively resolve such conflicts; and if paragraph 21 (*e*) of the report stated that it nonetheless intended to deal with the hierarchy of norms, that was solely in relation to treaty law, and thus in a limited context.

42. As to Mr. Kateka's proposal to delete the footnote in paragraph 21 (*b*) of the report, that footnote was important in that it indicated that the Commission's perspective was a technical one, as well as attenuating the somewhat abstract nature of the words in inverted commas in that subparagraph.

43. With regard to the comment made by Ms. Escarameia and Mr. Galicki, the concept of the expansion of international law had not been taken up, for three reasons: first, the term harked back to the notion of the expansion of international law from Europe to other regions; second, international law had always been extremely wide in scope and it was its content that had changed; and, third, it was sociologically wrong to say that international law had expanded, since it had in fact been marginalized. That, furthermore, was a problem with which the Commission should come to grips.

44. Finally, as Mr. Brownlie had suggested, it might be mentioned in the summary of the discussions that some members had referred to the conflicts between different norms. As for self-contained regimes, nothing in the report presupposed their existence or indicated that there should be self-contained regimes. Regimes of that type should be an exception.

45. Mr. SEPÚLVEDA said that the title of the topic wrongly placed too much stress on the negative aspects of the diversification of international law, even though the positive aspects of the phenomenon were briefly alluded to in paragraph 7 of the report of the Study Group. One of the objectives of the series of studies recommended in paragraph 21 should, however, be to find solutions to some of the problems raised by that diversification. It would thus be desirable to make some reference in the title to the concept of integration, which was the antithesis of fragmentation.

46. Mr. KATEKA said that, contrary to Mr. Koskeniemi's understanding, he had proposed deleting not only the footnote but all the words in subparagraph (*b*) following "general developments in international law", so as to preserve the uniformity of the report and eliminate any Eurocentric connotations.

47. Mr. RODRÍGUEZ CEDEÑO said that, broadly speaking, he endorsed the report and that he supported the change made to its title. Expansion and diversification were two different things, and, if one were to talk of an enlargement, that enlargement was thematic, not territorial. If, as was stated in paragraph 14 of the report, the

Commission was not to deal with the relationship among international judicial institutions, it could nonetheless not ignore the effect of judicial decisions on international law.

48. He supported the proposal that a seminar should be organized on the subject referred to in paragraph 17 of the report. While the subject was unquestionably academic, it had practical consequences, and paragraph 21 rightly stated that the purpose of the studies proposed must be to assist international judges and practitioners in coping with the consequences of the diversification of international law.

49. With regard to the title, the term "difficulties" perhaps had too negative a connotation, and it might be preferable to replace it with a reference to the "consequences" or "effects" of the diversification of international law.

50. Moreover, it should be stated in paragraph 6 that the increase in the fragmentation of international law had its origin in the intensification of international relations. He would make a precise proposal in that regard when the Commission came to adopt the report.

51. With regard to methodology, there was no doubt that, as was stated in paragraph 10 of the report, the subject was not suitable for codification. As for the three aspects of the undertaking referred to in paragraphs 11 and 12, they must be conceived as complementary. Last, he supported the recommendations of the Study Group set out in paragraph 21.

52. Mr. Sreenivasa RAO said that the fragmentation of international law was a topic of contemporary relevance whose study was timely indeed and of interest in technical as well as in practical terms. Even without contemplating situations where the rules of international law were indeed fragmented, States and peoples had expectations of international law that were by no means identical and were thus fragmented in themselves.

53. When taking up the study of the diversification of international law and the corresponding difficulties, a number of questions should be asked. What was the exact purpose of the study? Was the Commission to study the diversification of international law in order to see how it affected its own mandate, or should it rather be looking at the opportunities and challenges it posed for the development and codification of the law? He thought that aspect deserved to be clarified. Similarly, with regard to the subjects proposed for study in paragraph 21 of the Study Group's report, what could be the connecting link that could bind them together?

54. He also had questions about the seminars that were to be organized according to paragraph 17 of the report. He wondered what the Commission's exact role should be, where the seminars would be held and who would cover the costs. The analogy with the human rights treaty bodies was not relevant because, unlike the institutions that would participate in a seminar on the fragmentation of international law, they worked under a single rubric.

55. Finally, he recalled that the Commission reported to the Sixth Committee. It therefore had to know precisely

how it would present the study of the subject to the Sixth Committee, which would in return give it useful guidance for its work.

56. Mr. MOMTAZ, referring to the first part of the report (“Summary of discussion”), said that, while he welcomed the reference in paragraph 14 to the problem of fragmentation caused by the differing application of rules of law by international judicial institutions, he thought that the explanation given in the second sentence was not clear enough. In his opinion, a distinction must be made between two different situations.

57. The first was when judicial institutions applied different rules of international law to solve the same problem. The International Tribunal for the Former Yugoslavia and ICJ had based themselves on differing criteria, for example, for the attribution of an act to a State.

58. The second situation related to the differences between courts in what they determined to be the applicable rule of law. The decisions of the International Tribunal for the Former Yugoslavia and ICJ differed in that respect as well. With regard to environmental protection, for example, the International Tribunal for the Former Yugoslavia had found that the applicable rule was a customary rule, whereas ICJ had considered that it was a conventional rule.

59. Turning to paragraph 21 of the report, he pointed out that the subject for study proposed in subparagraph (e) (hierarchy in treaty law) actually related to the determination of the rule, which varied from one court to the next.

60. He therefore proposed that the wording of paragraph 14 should be amended to make the meaning of paragraph 21 (e) clearer.

61. Mr. ADDO said that, contrary to what the Study Group stated in paragraph 9 of its report, the term “fragmentation” should be retained in the title of the topic. Not only was that term catchier than those that had been proposed to replace it, but it also corresponded better to the reality. He did not see how the retention of the term could place the study in an unduly negative light. Even if there were negative connotations, the Commission must determine and describe in the text to be adopted what should be done to counter them. In addition, the term was in the title under which the Sixth Committee had approved the study of the topic.³

62. Finally, he requested Mr. Koskenniemi to explain what he had meant when he had spoken of the Commission’s “grandfather rights” over the Vienna Conventions.

63. Mr. MANSFIELD said that, as the Chair of the Study Group had explained, the subject of the fragmentation of international law was different from those the Commission had dealt with in the past, and this could and should affect the Commission’s approach to it. It was un-

necessary to have a fully developed methodology or clear end product before commencing work. A more exploratory approach was appropriate. But the work must above all be of practical relevance and be timely. That was why he entirely endorsed the “toolbox” approach advocated in the report.

64. Mr. KOSKENNIEMI, replying to Mr. Addo’s question, said that he had spoken of the Commission’s “grandfather rights” over the 1969 and 1986 Vienna Conventions because people might ask why the Commission was arrogating to itself the right to take up the question of the fragmentation of international law. The fact that the Commission had drafted the texts of the Conventions was one of the reasons why subjects like that of reservations to treaties had been allocated to it. It could be said that the Commission was the guardian of the Conventions.

65. Mr. KAMTO, endorsing the comments made by Mr. Addo, said he thought that the original title of the topic should be retained for both practical and conceptual reasons. If the term was dropped, the topic would in a sense be deprived of its meaning. The Commission should not be haunted by the negative connotations of the term, which could be countered by giving it a good definition in the body of the text. He could, however, understand Mr. Rodríguez Cedeño’s concerns and could agree to the study’s being entitled “Consequences of the fragmentation of international law”.

66. The CHAIR invited the members of the Commission to think about formal amendments that they might like to make to the report with a view to its adoption paragraph by paragraph at the next meeting.

67. Mr. SIMMA (Chair of the Study Group on the Fragmentation of International Law) requested the members of the Commission to think about questions they might wish to put to the Sixth Committee.

The meeting rose at 12.45 p.m.

2742nd MEETING

Wednesday, 7 August 2002, at 10.05 a.m.

Chair: Mr. Robert ROSENSTOCK

Present: Mr. Addo, Mr. Al-Baharna, Mr. Baena Soares, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kamto, Mr. Kateka, Mr. Kemicha, Mr. Koskenniemi, Mr. Mansfield, Mr. Momtaz, Mr. Niehaus, Mr.

³ General Assembly resolution 55/152 of 12 December 2000, para. 8.