

Document:-  
**A/CN.4/SR.2823**

**Summary record of the 2823rd meeting**

Topic:  
**Programme of work**

Extract from the Yearbook of the International Law Commission:-  
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guideline 2.6.1 to be referred to the Drafting Committee, on the understanding that the Committee would have full freedom, in the light of the discussions, to combine, rearrange, merge or amend the various versions that he had proposed, particularly those contained in paragraphs 15 and 22 of his report and, possibly, the new version that he had just proposed orally.

41. Draft guideline 2.6.2 had been broadly accepted and its referral to the Drafting Committee should not give rise to any problems. Only one member had expressed some doubts, but, as he himself had recognized, those doubts were based on his well-known hostility to the late formulation of reservations. In fact, all members were hostile to such late formulation of reservations, but it was a fact of international legal life which States held dear and which the Commission had taken into account. He was absolutely not prepared to go back over that point, and, since the Commission had unwisely decided to describe the opposition of a State or an international organization to the late formulation of a reservation as an “objection”, it was essential to clarify matters, and that was precisely what draft guideline 2.6.2 was intended to do.

42. In conclusion, he expressed the hope that draft guidelines 2.6.1 and 2.6.2 would be referred to the Drafting Committee in the way that he had indicated.

43. Mr. ECONOMIDES said that he thought that the Special Rapporteur was trying to build on the wrong legal foundation. He referred to an “intermediate” effect between the two possibilities provided for in the 1969 and 1986 Vienna Conventions, those of excluding the provision to which the reservation related or objecting to the application of the treaty as a whole. Those two possibilities were enumerated exhaustively and there was no “intermediate” effect. The Commission could, of course, ignore those Vienna Conventions and build on the basis of the new practice, but it had decided from the very beginning to respect the Conventions. Paragraph 18 of the report showed that the effect of an objection could be not only to exclude the provision to which the reservation related, but also to exclude other provisions of the treaty which had not been affected by the reservation. In such a case, however, what were involved were new reservations, formulated by the objecting State, and the reserving State had to be given the right to formulate an objection to those new reservations. The Special Rapporteur should therefore prepare a draft guideline on reservations formulated by an objecting State and another on objections formulated by the reserving State.

44. The Special Rapporteur’s approach suggested that he was influenced by the concept of countermeasures, because, in presenting a State that formulated an objection as though it was applying a countermeasure, he was moving from the law of treaties into the law of State responsibility. The practice which had come into being since the adoption of the 1969 and 1986 Vienna Conventions was naturally worth taking into account, but two principles must be established in respect of any new practice: it must be compatible with the 1969 Vienna Convention, and, if that Convention contained gaps, it must be useful and positive and not likely to destroy the law of treaties. However, the concept of the “intermediate effect” of an objection might well destroy the law of treaties.

45. The CHAIRPERSON said that, if he heard no objection, he would take it that the Commission wished to refer draft guidelines 2.6.1 and 2.6.2 to the Drafting Committee.

*It was so decided.*

*The meeting rose at 12.40 p.m.*

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## 2823rd MEETING

*Tuesday, 27 July 2004, at 10.10 a.m.*

*Chairperson:* Mr. Teodor Viorel MELESCANU

*Present:* Mr. Addo, Mr. Al-Baharna, Mr. Al-Marri, Mr. Baena Soares, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Ms. Economides, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kateka, Mr. Kemicha, Mr. Kolodkin, Mr. Koskeniemi, Mr. Mansfield, Mr. Matheson, Mr. Momtaz, Mr. Niehaus, Mr. Operti Badan, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Ms. Xue, Mr. Yamada.

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### **Programme, procedures and working methods of the Commission and its documentation (A/CN.4/537, sect. H, A/CN.4/L.664/Rev.1)**

[Agenda item 9]

#### REPORT OF THE PLANNING GROUP

1. Ms. XUE (Chairperson of the Planning Group), presenting the report of the Planning Group (A/CN.4/L.664/Rev.1), said that at its three meetings the Planning Group had discussed the report of the Working Group on long-term programme of work; new topics for inclusion in the current programme of work; the Strategic Framework (2006–2007) for Programme 5: Subprogramme 3 (Progressive development and codification of international law); the documentation of the Commission; and the dates and place of the fifty-seventh session.

2. The Chairperson of the Working Group on long-term programme of work had presented an oral progress report to the Planning Group. After a thorough debate, the Planning Group had decided to recommend to the Commission the inclusion of the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)” in its long-term programme of work.

3. Moreover, since the Commission was likely to complete the first reading of two topics at its current session, the Planning Group had decided to recommend the inclusion of two new topics in its current programme of work: “Effects of armed conflicts on treaties” and “Expulsion of aliens”.

4. In response to the Acting Legal Counsel’s request for comments on the new Strategic Framework for

2006–2007, the Planning Group recommended that the Commission should take note with approval of Subprogramme 3 (Progressive development and codification of international law).

5. The documentation of the Commission had also been considered, and, in particular, the question of the need for summary records in the light of General Assembly resolution 58/250 of 23 December 2003. The Planning Group recommended that the *status quo* should be maintained in that regard.

6. Lastly, the Planning Group recommended that the fifty-seventh session of the Commission should be held from 2 May to 3 June and from 4 July to 5 August 2005, at the United Nations Office at Geneva.

7. Mr. ECONOMIDES noted that, according to the report, the Working Group on long-term programme of work had considered various topics, some of which it would continue to consider in the future, whereas it had decided that others were not suitable for codification. The Commission was surely entitled to know what the topics in question were. The report of the Planning Group should be amended accordingly.

8. The CHAIRPERSON said that it was not customary for procedural reports such as that of the Planning Group to enter into such detail. The Rapporteur would ensure that the topics in question were named in the report of the Commission.

9. Mr. MOMTAZ said that, in view of the fact that the Planning Group had recommended two new topics for inclusion in the current programme of work, the reference to “a new topic” in the title of the chapter on that matter in its report should be amended to read “two new topics”.

10. The CHAIRPERSON noted that, before taking a decision on the recommendation concerning the inclusion of two new topics in the current programme of work, the Commission should, in accordance with established practice, engage in consultations on the appointment of special rapporteurs. Once those consultations had been satisfactorily completed, it would be in a position to decide whether or not to include the two topics in the programme of work.

11. Mr. PAMBOU-TCHIVOUNDA asked for confirmation that the General Assembly was required to endorse any topic before the Commission could include it in its programme of work.

12. The CHAIRPERSON confirmed that the two topics recommended by the Planning Group for inclusion in the current programme of work had already been approved by the General Assembly<sup>1</sup> by virtue of its approval of the report of the Commission to the General Assembly on the work of its fifty-second session,<sup>2</sup> where the topics had appeared under the long-term programme of work;<sup>3</sup> and

<sup>1</sup> See General Assembly resolution 55/152 of 12 December 2000, para. 8.

<sup>2</sup> *Yearbook ... 2000*, vol. II (Part Two).

<sup>3</sup> *Ibid.*, p. 131, para. 729.

that the topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)”, recommended for inclusion in the long-term programme of work, remained to be approved.

13. Mr. YAMADA said that, since the two new topics had already been approved by the General Assembly, there was nothing to prevent the Commission from starting to consider them immediately. He therefore sought assurances that the Chairperson would conduct informal consultations on the appointment of special rapporteurs without delay. It was also to be hoped that the proposal regarding the new topic “Obligation to extradite or prosecute (*aut dedere aut judicare*)” would be favourably received by the Sixth Committee, so that a start could be made on that topic at the next session.

14. The CHAIRPERSON confirmed that he would undertake consultations in an expeditious manner, so that the process could be finalized as soon as possible. The Commission’s readiness to begin work on the two new topics at its next session would be duly reflected in its report on the work of its current session.

15. He took it that the Commission wished to take note of the report of the Planning Group, without prejudice to its final decision with regard to the sections concerning new topics.

*It was so decided.*

#### **Organization of work of the session (*concluded*)**

16. Mr. YAMADA (Special Rapporteur) announced that the final composition of the open-ended Working Group on transboundary groundwaters was: Mr. Baena Soares, Mr. Brownlie, Ms. Escameia, Mr. Fomba, Mr. Mansfield, Mr. Matheson, Mr. Niehaus, Mr. Opertti Badan and, *ex officio*, Mr. Comissário Afonso.

*The meeting rose at 10.30 a.m.*

### **2824th MEETING**

*Thursday, 29 July 2004, at 10 a.m.*

*Chairperson:* Mr. Teodor Viorel MELESCANU

*Present:* Mr. Addo, Mr. Al-Baharna, Mr. Al-Marri, Mr. Baena Soares, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Mr. Economides, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kabatsi, Mr. Kateka, Mr. Kemicha, Mr. Kolodkin, Mr. Koskenniemi, Mr. Mansfield, Mr. Matheson, Mr. Momtaz, Mr. Niehaus, Mr. Opertti Badan, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Rodríguez Cedeño, Mr. Yamada.