

Document:-
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Summary record of the 2830th meeting

Topic:
Adoption of the report

Extract from the Yearbook of the International Law Commission:-
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Commentary to guideline 2.5.12 (Withdrawal of an interpretative declaration)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

87. Mr. GAJA said that the “interpretative declaration” by the Government of Italy concerning the Convention relating to the Status of Refugees had generally been regarded as a reservation. The text should contain some indication that the nature of the declaration had been called into question.

88. Mr. PELLET (Special Rapporteur) suggested that the first sentence of the footnote at the end of the second sentence of the paragraph should be followed by a new sentence that would read: “There are doubts about the nature of the declaration, which has been regarded as a reservation”.

Paragraph (2), as amended, was adopted.

Paragraphs (3) and (4)

Paragraphs (3) and (4) were adopted.

Commentary to guideline 2.5.13 (Withdrawal of a conditional interpretative declaration)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Section C, as amended, was adopted.

B. Consideration of the topic at the present session (concluded) (A/CN.4/L.658 and Corr.1 and Add.1)

1. INTRODUCTION BY THE SPECIAL RAPporteur OF HIS NINTH REPORT

Paragraphs 1 and 2 (A/CN.4/L.658/Add.1)

Paragraphs 1 and 2 were adopted.

Paragraph 3

Paragraph 3 was adopted with minor drafting changes.

Paragraph 4

Paragraph 4 was adopted.

Paragraph 5

89. Mr. PELLET (Special Rapporteur) said that, in both the French and the English texts, the words “a different institution” should be incorporated into a relative clause—for example, “which constitutes a different institution”—rather than being left in apposition.

Paragraph 5, as amended, was adopted.

2. SUMMARY OF THE DEBATE

Paragraphs 6 to 17

Paragraphs 6 to 17 were adopted.

3. SPECIAL RAPporteur’S CONCLUDING REMARKS

Paragraph 18

Paragraph 18 was adopted with minor drafting changes.

Paragraph 19

90. Mr. PELLET (Special Rapporteur) said that, in subparagraph (c), the words “*une question très complexe et délicate*” in the French text should be in the plural. In subparagraph (e), the words “*auteur de la réserve*” in the alternative version of draft guideline 2.6.1 should be replaced by the words “*auteur de l’objection*”.

Paragraph 19, as amended, was adopted.

Section B, as amended, was adopted.

Chapter IX of the draft report, as a whole, as amended, was adopted.

The meeting rose at 12.55 p.m.

2830th MEETING

Friday, 6 August 2004, at 10.05 a.m.

Chairperson: Mr. Teodor Viorel MELESCANU

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candioti, Mr. Chee, Mr. Comissário Afonso, Mr. Daoudi, Mr. Dugard, Mr. Economides, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Kateka, Mr. Kolodkin, Mr. Mansfield, Mr. Matheson, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Yamada.

Tribute to the memory of Sir Robert Jennings

1. The CHAIRPERSON invited the members of the Commission to observe a minute of silence in tribute to the memory of Sir Robert Jennings, a former Chairperson of the International Law Commission, who had died on 5 August 2004.

The members of the Commission observed a minute of silence.

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

Chapter X. Fragmentation of international law: difficulties arising from the diversification and expansion of international law (A/CN.4/L.659)

A. Introduction

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraphs 3 and 4

Paragraphs 3 and 4 were adopted.

Section B was adopted.

C. Report of the Study Group

2. The CHAIRPERSON, recalling that the Commission had already taken note of the Study Group's report, which was contained in paragraphs 5 to 63 of document A/CN.4/L.659, proposed that those paragraphs as a whole should be adopted.

3. Mr. PELLET said that he did not object to the adoption of those paragraphs as a whole, but would like the word “*impérative*” in paragraph 10 of the French text to be replaced by the word “*dure*”, which was a better translation of the word “harder”.

Paragraphs 5 to 63 were adopted, subject to the amendment to the French text of paragraph 10 proposed by Mr. Pellet.

Section C was adopted.

Chapter X of the draft report, as a whole, as amended, was adopted.

Chapter XI. Other decisions and conclusions of the commission (A/CN.4/L.660)

4. The CHAIRPERSON said that he had completed his consultations on the Planning Group's recommendation that two new topics—“Expulsion of aliens” and “Effects of armed conflicts on treaties” should be included in the Commission's current programme of work. According to its established practice, the Commission did not take its final decision until a consensus had been reached on the appointment of a special rapporteur for each new topic. He was pleased to be able to announce that, as a result of the wide-ranging consultations that he had held, there appeared to be broad support for the appointment of Mr. Kamto as Special Rapporteur for the topic of “Expulsion of aliens” and of Mr. Brownlie as Special Rapporteur for the topic of “Effects of armed conflicts on treaties”.

It was so decided.

5. The CHAIRPERSON, speaking as a member of the Commission, congratulated the two new Special Rapporteurs, but said that it was regrettable that the Group of Eastern European Countries was underrepresented and had no special rapporteur at the present time. Equitable geographical distribution was not, of course, the same as mathematical division, but the lack of representation of the Eastern European countries among the special rapporteurs was hardly justifiable and he believed that the members of the Commission intended to appoint a special rapporteur from an Eastern European country for the topic “*aut dedere aut judicare*”, whose inclusion in the long-term programme of work had been recommended by

the Working Group on the long-term programme of work. Speaking as Chairperson, he invited the members of the Commission to consider chapter XI of the draft report section by section.

A. Programme, procedures and working methods of the Commission and its documentation

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

1. WORKING GROUP ON LONG-TERM PROGRAMME OF WORK

Paragraph 4

Paragraph 4 was adopted.

Paragraph 5

6. Mr. PELLET proposed that, in the light of the statement just made by the Chairperson, the following sentence should be added to paragraph 5: “The Commission considers that, if there is no objection by the Sixth Committee, the topic ‘*aut dedere aut judicare*’ might be included in its agenda at its next session.”

7. Mr. MIKULKA (Secretary to the Commission), speaking at the invitation of the Chairperson, said that the Commission had never requested the Sixth Committee's approval for the inclusion of a topic in its programme of work and that, in so doing, it might be creating an unfortunate precedent that would make the procedure for the inclusion of new topics in its programme of work even more cumbersome.

8. The CHAIRPERSON said that the proposal by Mr. Pellet might be amended to read: “The Commission intends to include this topic in its programme of work and to appoint a special rapporteur at its next session.”

9. Mr. PELLET, supported by Mr. Sreenivasa RAO, said that the Commission could not simply present the General Assembly with a *fait accompli*.

10. Following a discussion in which Mr. YAMADA, Mr. MANSFIELD, Mr. GAJA and Mr. PELLET took part, the CHAIRPERSON proposed that the following sentence should be added to paragraph 5: “The Commission envisages the inclusion of this topic in its current programme of work at its next session.”

It was so decided.

2. NEW TOPICS FOR INCLUSION IN THE CURRENT PROGRAMME OF WORK OF THE COMMISSION

Paragraph 6

11. The CHAIRPERSON said that paragraph 6 would have to be completed in the light of the decision the Commission had taken at the current meeting. It would thus end with the following words: “...the topics entitled ‘Expulsion of aliens’ and ‘Effects of armed conflicts on treaties’.”

Paragraph 6, as amended, was adopted.

3. STRATEGIC FRAMEWORK

4. DOCUMENTATION OF THE COMMISSION

Paragraphs 7 to 10

Paragraphs 7 to 10 were adopted.

12. Mr. MANSFIELD, supported by Mr. CANDIOTI, recalled that, in its report to the General Assembly on the work of its fifty-fifth session, the Commission had regretted the decision that the General Assembly had taken in its resolution 56/272 of 27 March 2002 in respect of the honoraria of the members of the Commission and, in particular, the special rapporteurs, especially those from developing countries.¹ The situation had not changed and the question was all the more relevant because the Commission had decided to appoint a special rapporteur from a developing country. If it wished to raise the question, the Commission might reproduce paragraph 447 of its report on the work of its previous session.

13. Mr. Sreenivasa RAO said that he agreed that the Commission must stress the importance of and need for honoraria, particularly for special rapporteurs from developing countries, but it must be careful about reproducing the paragraph that had appeared in its report on the work of its previous two sessions because it would only be weakening its position if it repeated the same thing year after year.

14. The CHAIRPERSON proposed that the first and last sentences of paragraph 447 of its report on the work of its fifty-fifth session might, with a few minor changes, form the basis for the following new paragraph:

“The Commission once again reaffirmed the views that it had expressed in paragraphs 525 to 531 of its report to the General Assembly on the work of its fifty-fourth session.[...] The Commission stressed that General Assembly resolution 56/272 of 27 March 2002 especially affects special rapporteurs, in particular those from developing countries, as it compromises support for their research work.

¹[...] *Yearbook ... 2002*, vol. II (Part Two).”

That paragraph would follow paragraph 10 in chapter XI, section A.5, entitled “Honoraria”, of the Commission’s report.

It was so decided.

Section A, as amended, was adopted.

B. Date and place of the fifty-seventh session of the Commission

Paragraph 11

Paragraph 11 was adopted.

Section B was adopted.

¹ *Yearbook ... 2003*, vol. II (Part Two), p. 101, para. 447.

C. Cooperation with other bodies

Paragraphs 12 to 15

Paragraphs 12 to 15 were adopted.

Paragraph 16

15. Mr. PELLET proposed that the following sentence should be added at the end of paragraph 16: “On 5 August 2004, several members of the Commission responded to the invitation of the Sub-Commission on the Promotion and Protection of Human Rights and held a fruitful exchange of views with the members of the Sub-Commission.”

Paragraph 16, as amended, was adopted.

Paragraph 17

16. Mr. YAMADA proposed that, on the basis of the exchange of views which had taken place with the members of ILA, the end of paragraph 17 should be amended to read: “in particular, the programme of work, water resources and responsibility of international organizations”.

Paragraph 17, as amended, was adopted.

Section C, as amended, was adopted.

D. Representation at the fifty-ninth session of the General Assembly

Paragraph 18

Paragraph 18 was adopted.

Paragraph 19

17. The CHAIRPERSON said that, following the informal consultations that he had held on the matter, he took it that the Commission wished to request Mr. Dugard, Special Rapporteur for the topic “Diplomatic protection”, and Mr. Sreenivasa Rao, Special Rapporteur for the topic “International liability for injurious consequences arising out of acts not prohibited by international law (international liability in case of loss from transboundary harm arising out of hazardous activities)”, to attend the fifty-ninth session of the General Assembly. He therefore proposed that paragraph 19 should be completed accordingly.

Paragraph 19, as amended, was adopted.

Section D, as amended, was adopted.

E. International Law Seminar

Paragraphs 20 to 32

Paragraphs 20 to 32 were adopted.

Section E was adopted.

18. The CHAIRPERSON, replying to a question by Mr. MOMTAZ, said that, in accordance with established practice, the annex to chapter XI would be annexed to the report of the Commission.

Chapter XI of the draft report, as a whole, as amended, was adopted.

Chapter II. Summary of the work of the Commission at its fifty-sixth session (A/CN.4/L.651)

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

Paragraph 4

19. Mr. Sreenivasa RAO said that paragraph 4 would be easier to read if it was divided into two or three sentences referring to each of the decisions the Commission had taken.

Paragraph 4, as amended, was adopted.

Paragraph 5

Paragraph 5 was adopted.

Paragraph 6

20. Mr. PELLET said that, in the second sentence of the French text, the words “*sur l’objection à la formulation ou*” should be replaced by the words “*et des objections à la formulation ou*”.

Paragraph 6, as amended in French, was adopted.

Paragraph 7

Paragraph 7 was adopted.

21. The CHAIRPERSON proposed that the following new paragraph 7 *bis* should be added at the end of paragraph 7: “The Commission decided to include the following two new topics in its programme of work: ‘Effects of armed conflicts on treaties’ and ‘Expulsion of aliens’. It appointed Mr. Ian Brownlie as Special Rapporteur on the first topic and Mr. Maurice Kamto as Special Rapporteur on the second.”

22. If he heard no objection, he would take it that the Commission accepted that proposal.

It was so decided.

Paragraph 7 bis was adopted.

Paragraphs 8 to 11

Paragraphs 8 to 11 were adopted.

Chapter II of the draft report, as a whole, as amended, was adopted.

Chapter III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.652)

Diplomatic protection

Paragraph 1

23. Mr. DUGARD (Special Rapporteur), noting that paragraph 1 did not indicate when Governments should submit their comments and observations, asked whether

that meant that they should submit them at the Sixth Committee’s session in November 2004.

24. The CHAIRPERSON said that Governments would be invited in writing to provide their comments and that all the necessary information, particularly relating to deadlines, would be contained in that written request.

Paragraph 1 was adopted.

Paragraph 2

Paragraph 2 was adopted.

Responsibility of international organizations

Paragraph 3

25. Mr. MATHESON, referring to the second sentence, proposed that a comma and the following wording should be added after the word “acts”: “bearing in mind that different considerations may come into play with regard to international organizations in various respects”. It would be useful to recall that the Commission recognized that differences did exist between responsibility of States and responsibility of international organizations.

26. Mr. PELLET said that the words “has followed the pattern of the articles” were absolutely inappropriate and that they should be replaced by the words “based itself on the articles”.

27. The CHAIRPERSON suggested that the words “followed the approach” should be used.

28. Mr. GAJA (Special Rapporteur) said that the general idea was to indicate that the Commission had not adopted an innovative approach and that it had simply drawn a parallel with what it had done in the case of the topic of responsibility of States for internationally wrongful acts. In his opinion, it would be better to use the words “followed the general pattern” and keep the rest of the text as it stood, perhaps with Mr. Matheson’s amendment, subject to minor changes in the English text to avoid certain repetitions.

29. Mr. PAMBOU-TCHIVOUNDA said that he agreed with the word “pattern”, which was the most suitable.

Paragraph 3, as amended by the Special Rapporteur and Mr. Matheson, was adopted.

Shared natural resources

International liability for injurious consequences arising out of acts not prohibited by international law (international liability in case of loss from transboundary harm arising out of hazardous activities)

Unilateral acts of States

Reservations to treaties

Paragraphs 4 to 12

Paragraphs 4 to 12 were adopted.

Paragraph 13

30. Mr. ECONOMIDES said that the second half of the second sentence, which read “although it was very doubtful whether a reservation that was prohibited or improperly formulated would entail its author’s responsibility”, expressed an opinion, even though the Commission had not yet considered that question; that was somewhat hasty, in his view. That opinion was wrong, moreover, because article 2 of the draft articles on responsibility of States for internationally wrongful acts² provided that a breach of a treaty provision was an internationally wrongful act. There was thus no exception to that principle. However, the phrase under consideration implied that there might be an exception, which was quite serious. He therefore requested that that phrase should be deleted.

31. Mr. PELLET (Special Rapporteur on reservations to treaties) said that he found the phrase useful and wanted it to be retained.

32. Mr. ECONOMIDES said that he therefore formally requested that the Commission should take a vote on the question.

33. Mr. PAMBOU-TCHIVOUNDA said he feared that the Commission was becoming involved in an inappropriate debate. He therefore proposed that the phrase in question should be deleted and that the sentence should end with the words “State responsibility”.

34. Mr. GAJA said that, since the Special Rapporteur found the phrase useful, it should be retained, but the word “very” could be deleted.

35. Mr. Sreenivasa RAO said that the sentence could simply be amended to read: “It was pointed out, for example, that the word ‘lawfulness’ had disadvantages and might even arguably bring in issues concerning State responsibility.” He would, however, not insist on his proposal if it did not meet with the approval of the members of the Commission.

36. Following informal consultations among various members of the Commission, the CHAIRPERSON proposed that the second sentence should be amended to read: “It was pointed out, for example, that the word ‘lawfulness’ had the disadvantage of referring to the law of State responsibility, although the Commission had not yet considered the question as to whether a reservation that

was prohibited or improperly formulated would entail its author’s responsibility”.

37. If he heard no objection, he would take it that the Commission accepted that proposal.

It was so decided.

Paragraph 13, as amended, was adopted.

Paragraphs 14 and 15

Paragraphs 14 and 15 were adopted.

Chapter III of the draft report, as a whole, as amended, was adopted.

Chapter I. Organization of the session (A/CN.4/L.650)

Paragraphs 1 to 7

Paragraphs 1 to 7 were adopted.

Paragraph 8

38. Mr. PELLET said it should be indicated that the working groups were open to participation by all members of the Commission.

Paragraph 8, as amended, was adopted.

Paragraphs 9 to 11

Paragraphs 9 to 11 were adopted.

Chapter I of the draft report, as a whole, as amended, was adopted.

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

Closure of the session

39. After the customary exchange of courtesies, the CHAIRPERSON declared the fifty-sixth session of the International Law Commission closed.

The meeting rose at 12.30 p.m.

² See 2792nd meeting, footnote 5.