

Document:-
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Summary record of the 2921st meeting

Topic:
Shared natural resources

Extract from the Yearbook of the International Law Commission:-
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(<http://legal.un.org/ilc/>)*

words “international organizations”, wrongly omitted in draft guidelines 2.7.4 and 2.7.6, as Mr. Galicki had pointed out. Mr. Yamada had asked why draft guideline 2.7.4, whose wording he had not criticized, was so complex, and he had answered his own question by commenting on draft guideline 2.7.7: those draft guidelines were complex because they dealt with complex questions. That said, he had been imprudent to say that a simple objection was merely a policy statement. Although Mr. Al-Marri seemed to be in agreement, he himself was hesitant and could not subscribe to that idea at present. He had tried to elaborate the draft guidelines, and draft guidelines 2.7.7 and 2.7.8 in particular, which Mr. Yamada had commented on at length, so as not to prejudice the question. On the other hand, Mr. Petrič and Mr. Yamada, supported by Mr. Caflisch, had probably been right to say that the second sentence of draft guideline 2.7.7 should be moved to draft guideline 2.7.8, in connection with which Ms. Escarameia had argued that objections should be encouraged and reservations discouraged.

22. He noted, however, that all members of the Commission were in favour of referring the draft guidelines to the Drafting Committee, on the understanding that draft guideline 2.7.9 was most in need of recasting, bearing in mind the issue of the 12-month period. He welcomed the dialogue that had taken place and stressed that the topic was indeed complex because it had given rise to a protracted debate on purely procedural problems. Once it had completed its considerations of problems of formulation and procedure, the Commission would be able to resume its elaboration of the third part of the Guide to Practice, in particular questions of validity, the effects of possible invalidity and the effects of reservations and objections.

23. Mr. PETRIČ said that he firmly supported Mr. McRae’s proposal and thought that something should be added about explaining the reasons for objections. The discussion which the Commission had had with human rights experts had highlighted the full significance of the question, and he had been persuaded by the experts’ approach to reservations.

24. The CHAIRPERSON, noting that the Special Rapporteur and several other members had recommended that draft guidelines 2.7.1 to 2.7.9 should be referred to the Drafting Committee, said that if he heard no objection, he would take it that the Commission agreed to that proposal.

It was so decided.

Organization of the work of the session (continued)

[Agenda item 1]

25. In conformity with the wish expressed by Mr. Yamada, Special Rapporteur on shared natural resources, the CHAIRPERSON proposed that a working group on the topic should be reconvened, to be chaired by Mr. Candiotti. He took it that the Commission approved that proposal.

It was so decided.

The meeting rose at 11.10 a.m.

2921st MEETING

Friday, 18 May 2007, at 10.05 a.m.

Chairperson: Mr. Ian BROWNLIE

Present: Mr. Caflisch, Mr. Candiotti, Mr. Comisário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobson, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.

Shared natural resources¹⁰⁵ (A/CN.4/577 and Add.1–2, sect. A, A/CN.4/580,¹⁰⁶ A/CN.4/L.717¹⁰⁷)

[Agenda item 2]

FOURTH REPORT OF THE SPECIAL RAPPORTEUR

1. The CHAIRPERSON invited Mr. Yamada, Special Rapporteur on shared natural resources, to introduce his fourth report on the topic (A/CN.4/580).

2. Mr. YAMADA (Special Rapporteur) said that the topic of shared natural resources, which had been included in the programme of work of the Commission since 2002,¹⁰⁸ was generally perceived to cover three kinds of natural resources: groundwaters, oil and natural gas. The Commission had decided to take a step-by-step approach and to focus first on groundwaters.¹⁰⁹ At the previous session, it had adopted on first reading a set of 19 draft articles on the law of transboundary aquifers, which it had transmitted to the United Nations General Assembly together with the commentaries thereto. The text of the draft articles and the commentaries were reproduced in Chapter VI of the report of the Commission on the work of its fifty-eighth session.¹¹⁰

3. In the discussions held in the Sixth Committee of the General Assembly at its sixty-first session in 2006, the delegations had welcomed the timely adoption of the draft articles on first reading and had expressed generally favourable responses to them. Those responses were reflected in section A of the topical summary of the discussion in the Sixth Committee of the General Assembly during its sixty-first session, prepared by the Secretariat (A/CN.4/577 and Add.1–2). He was expecting to receive Governments’ written comments and observations on the draft articles by 1 January 2008, as requested by the

¹⁰⁵ For the text of the draft articles on the law of transboundary aquifers adopted on first reading by the Commission and the commentaries thereto, see *Yearbook ... 2006*, vol. II (Part Two), chap. VI, sect. C, pp. 91 *et seq.*, paras. 75–76.

¹⁰⁶ Reproduced in *Yearbook ... 2007*, vol. II (Part One).

¹⁰⁷ Mimeographed, available on the Commission’s website. See also below the summary record of the 2947th meeting, paras. 114–117.

¹⁰⁸ *Yearbook ... 2002*, vol. II (Part Two), p. 100, paras. 518–519.

¹⁰⁹ *Ibid.*, p. 101, para. 520.

¹¹⁰ *Yearbook ... 2006*, vol. II (Part Two), chap. VI, sect. C, pp. 91 *et seq.*, paras. 75–76.

Commission.¹¹¹ Accordingly, the Commission should defer consideration of the draft articles on second reading until its sixtieth session in 2008, by which time those comments and observations would have been submitted.

4. UNESCO, which had rendered valuable assistance to the Commission for the past five years as the United Nations coordinating agency on the global water issue, was holding regional seminars in association with a number of regional organizations to brief Governments on the draft articles adopted on first reading, in order to assist them in formulating their comments. The first such seminar, for European Governments, was scheduled to take place in Paris at the end of May 2007. UNESCO also planned to hold a seminar in Canada for North American Governments and another in Argentina for Latin American and Caribbean Governments, both in the summer of 2007.

5. There was, however, one aspect of the topic that the Commission must address at the present session, namely the relationship between the work on transboundary aquifers and possible future work on oil and natural gas. The first time the Commission had dealt with shared natural resources had been when it had formulated draft articles on the law of the non-navigational uses of international watercourses,¹¹² which had eventually resulted in the 1997 Convention on the Law of the Non-Navigational Uses of International Watercourses (hereinafter the “1997 Watercourses Convention”). Article 2 of the Convention defined “watercourse” as “a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus”. Thus, the 1997 Watercourses Convention covered international surface waters, i.e. rivers and lakes, and only such groundwaters as were hydraulically linked to international surface waters. The last Special Rapporteur for the topic, the late Robert Rosenstock, had wanted to have the Convention also cover transboundary groundwaters that were not linked to surface waters, and he had called such groundwaters “confined groundwaters”.¹¹³ However, most members of the Commission had felt that confined groundwaters were more akin to oil and gas and that separate studies were required for them. Ultimately, the Commission had adopted a resolution recommending that the General Assembly should apply the draft articles *mutatis mutandis* to confined groundwaters, and that studies should be initiated on the subject of confined groundwaters.¹¹⁴ The new topic of shared natural resources in the Commission’s programme of work was thus the follow-up to the Commission’s recommendation and had been adopted on the basis of the syllabus prepared by Robert Rosenstock, in which he had proposed that studies on confined groundwaters, oil and natural gas should be undertaken.¹¹⁵ A formal decision on the final scope of the topic had not yet been taken.

¹¹¹ *Ibid.*, p. 91, para. 73.

¹¹² *Yearbook ... 1994*, vol. II (Part Two), p. 89, para. 222.

¹¹³ *Yearbook ... 1993*, vol. II (Part One), document A/CN.4/451 (first report), para. 11. See also *Yearbook ... 1994*, vol. II (Part One), document A/CN.4/462 (second report), pp. 113–115, paras. 1–11, and annex, pp. 123–128.

¹¹⁴ *Yearbook ... 1994*, vol. II (Part Two), p. 135 (resolution on confined transboundary groundwater).

¹¹⁵ *Yearbook ... 2000*, vol. II (Part Two), Annex, pp. 147–148.

6. The matter had often been raised during the consideration on first reading of the draft articles on the law of transboundary aquifers, because the proposed measures relating to aquifers might have implications for future work on oil and natural gas while, conversely, existing State practice and norms relating to oil and natural gas might have implications for the current work on transboundary aquifers. At the previous session, he had been instructed to present a report on the question at the present session; delegations had also commented on the issue during the debate in the Sixth Committee (A/CN.4/577 and Add.1–2, para. 24). The majority of the delegations that had commented had taken the view that the Commission should proceed with a consideration of the draft articles on the law of transboundary aquifers on second reading, independently of any work it might undertake on oil and natural gas.

7. His fourth report was rather brief and was intended only to assist members in taking a decision on that issue. Chapter I of the report described the origin, formation and exploitation of oil and natural gas (paras. 6–12). It also dealt with the similarities and dissimilarities between aquifers on the one hand and oil and natural gas on the other, not only with regard to their scientific and technical features, but also with regard to political, economic and environmental considerations (paras. 13–15). To summarize, there was a close similarity between the physical features of a non-recharging aquifer and those of the reservoir rock of oil and natural gas. The similarities between groundwaters on the one hand and oil and natural gas on the other ended there; in all other respects they were different.

8. It would perhaps suffice to highlight some particularly important characteristics of groundwaters. Fresh water was a life-supporting resource vital for human life and for which no alternative resource existed. It was vital to human hygiene and indispensable for food production, and it was the essential component of natural ecosystems and of organic life on the planet. For those reasons alone, the management policy for groundwaters must be completely different from that for oil and natural gas.

9. He also wished to emphasize the risk of a future global water crisis. Hundreds of millions of people, in particular in the developing world, might suffer from a shortage of clean and healthy fresh water. It was the Commission’s urgent task to formulate a legal framework for international cooperation on reasonable and equitable management of water resources and thereby avert international disputes over water.

10. In his view, the Commission should proceed with consideration of the draft articles on the law of transboundary aquifers on second reading at its sixtieth session and should endeavour to complete that second reading as expeditiously as possible, independently from any possible future work on oil and natural gas. He looked forward to hearing members’ views on that approach at the next few plenary meetings.

11. He was pleased that the Commission had approved his request to re-establish the Working Group on shared

natural resources, to be chaired by Mr. Candioti. His proposal for the Working Group was for it to begin by formulating a recommendation on the future programme of work on groundwaters, oil and natural gas, taking into account the views expressed in the plenary meetings; he then hoped to receive members' input for the preparation of his fifth report, which he would submit early in 2008. He planned to propose the complete set of draft articles for consideration on second reading. It would be very useful if members, and in particular new members, could express their views on the draft articles adopted on first reading and make suggestions for improvements. He would also like to hear whether they thought that the final product should take the form of a convention or of guidelines, as that would clearly affect the drafting.

12. He would hold an informal meeting, immediately following the end of the plenary, to brief the new members on the background to the draft articles on the law of transboundary aquifers adopted on first reading.

13. Mr. CANDIOTI (Chairperson of the Working Group on shared natural resources) announced that the Working Group was currently composed of Mr. Brownlie, Mr. Comissário Afonso, Ms. Escarameia, Mr. Gaja, Mr. Galicki, Mr. Hmoud, Ms. Jacobsson, Mr. McRae, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Vázquez-Bermúdez, Ms. Xue and himself, together with Mr. Yamada (Special Rapporteur).

The meeting rose at 10.30 a.m.

2922nd MEETING

Tuesday, 22 May 2007, at 10.05 a.m.

Chairperson: Mr. Ian BROWNLIE

Present: Mr. Caffisch, Mr. Candioti, Mr. Comissário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kemicha, Mr. Kolodkin, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Mr. Yamada.

Organization of the work of the session (*continued*)*

[Agenda item 1]

1. The CHAIRPERSON informed the members of the Commission that the Special Rapporteur on the expulsion of aliens, Mr. Kamto, had been delayed and would not be able to introduce his report as planned. Consideration of the item would thus be postponed until a later meeting.

2. Before adjourning the meeting, he wished to inform the Commission that in keeping with tradition, he had extended an invitation to the current President of the International Court of Justice, Judge Rosalyn Higgins, to visit the Commission to hold a discussion with the members. Judge Higgins had accepted the invitation and had suggested 10 July 2007 as the date for her visit; the Commission would therefore receive her on that day.

3. It had been brought to the attention of the Bureau that in the past several years successive Presidents of the International Tribunal for the Law of the Sea had expressed an interest in being invited to the Commission for an exchange of views. That interest had been informally reiterated in connection with the current session. The Bureau had discussed the matter and had decided to invite the current President of the Tribunal, Judge Rüdiger Wolfrum, during the second part of the session on the clear understanding that the invitation did not create a precedent and would not necessarily be renewed on an annual basis, something which would be made clear to Judge Wolfrum when he came to the Commission. He had thus extended an invitation to Judge Wolfrum, and the Commission would be informed of the latter's response.

4. Lastly, he said that, at the request of the General Assembly, the Secretariat had prepared a compilation of decisions of international courts, tribunals and other bodies in which reference had been made to the draft articles on responsibility of States for internationally wrongful acts, a topic which the Commission had completed in 2001.¹¹⁶ As some members of the Commission had expressed an interest in receiving that document, the Secretariat had issued the compilation as documents A/62/62 and Add.1; comments and observations by Governments on the subject had been issued as document A/62/63 and Add.1.¹¹⁷

The meeting rose at 10.10 a.m.

2923rd MEETING

Wednesday, 23 May 2007, at 10.05 a.m.

Chairperson: Mr. Ian BROWNLIE

Present: Mr. Caffisch, Mr. Candioti, Mr. Comissário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kemicha, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Mr. Yamada.

* Resumed from the 2920th meeting.

¹¹⁶ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, p. 26, para. 76.

¹¹⁷ Mimeographed, available at www.un.org.