

Document:-
A/CN.4/2954

Summary record of the 2954th meeting

Topic:
<multiple topics>

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

42. Mr. PELLET suggested that it would be wise to abide by the wording used in General Assembly resolution 61/34 of 4 December 2006, on the report of the International Law Commission on the work of its fifty-eighth session.

43. The CHAIRPERSON suggested that even though the Secretary had emphasized that Chapter II was a summary of the Commission's work and that Chapter X was the proper place for a more detailed account, the end of the paragraph should be modified to indicate that the persons in question were members of human rights monitoring bodies and that not all were from the United Nations.

44. Mr. VALENCIA-OSPINA agreed with Mr. Pellet's solution and proposed that the sentence should read: "The Commission convened a meeting with representatives of the United Nations human rights bodies set up under human rights instruments and with regional human rights bodies."

45. The CHAIRPERSON suggested that members should hold consultations with a view to finding more apposite wording.

Paragraph 9

46. Mr. PERERA said that the paragraph should also state that the seminar had been addressed by several members of the Commission. The details could appear in chapter X.

Paragraph 9, as amended, was adopted, subject to minor editorial corrections.

Paragraph 10

Paragraph 10 was adopted.

47. Mr. CANDIOTI, supported by Mr. SABOIA, said that although he had refrained from commenting on each point, he was unhappy with editorial policy. Chapter II always amounted to no more than a shorthand, not to say statistical, account of the Commission's work and left the reader unenlightened on a number of important matters. It was a lacklustre way of describing all the discussions that had taken place. Chapter II should be more user-friendly; it should awaken the reader's curiosity and generate a desire to know what happened next. He therefore suggested that, in future, chapter II should summarize the substantive content of reports and indicate in greater detail what questions had been most hotly debated. Meatier presentation and better "selling" of the Commission's work would influence discussions in the Sixth Committee.

48. Mr. PELLET said that Mr. Candioti had touched on a sore point. He personally disliked chapter II on principle. No attempt should be made to prepare a summary for the lazy—the more interesting chapter II was, the less some members of the Sixth Committee would read the remainder of the report. It would be wiser to highlight the main issues in the separate chapters of the report. If an overview was prepared, it was certain that 90 per cent of delegates to the Sixth Committee would read only that, and no serious discussion could be based on a digest. The better chapter II was, the more harm it would do.

49. The CHAIRPERSON said that while he did not wish to embark on a discussion of the content and structure of the report, he believed that some important issues had been broached. He found Mr. Candioti's proposals persuasive. Chapter II was rather dry, and as a wide public did consult the Commission's publications, editorial policy must be discussed by the Planning Group.

50. Ms. ESCARAMEIA pointed out that chapter II of the Commission's report was indeed on the Planning Group's agenda for the following year. Priority should therefore be given to that subject and a meeting should be held on it at the beginning of the session, since the Secretariat required guidance as early as possible on the drafting of the report. She supported the views of Mr. Candioti and did not feel that a digest would promote laziness. She was sure that Mr. Pellet did not read every article in every international law journal and that he often read abstracts in order to find out if the full article would be of interest to him. An expanded chapter II should summarize the most controversial issues; as it stood, the chapter said nothing of substance.

The meeting rose at 4.20 p.m.

2954th MEETING

Thursday, 9 August 2007, at 10 a.m.

Chairperson: Mr. Ian BROWNLIE

Present: Mr. Caflisch, Mr. Candioti, Mr. Comisário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobson, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Mr. Yamada.

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

CHAPTER VIII. *Responsibility of international organizations (concluded)* (A/CN.4/L.713 and Add.1-3)

C. *Text of the draft articles on responsibility of international organizations provisionally adopted so far by the Commission (concluded)* (A/CN.4/L.713/Add.1-3)

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-NINTH SESSION (*concluded*)

Commentary to draft article 45 [44] (Particular consequences of a serious breach of an obligation under this chapter) (*concluded*)

Paragraph (6) (*concluded*)

1. The CHAIRPERSON, recalling that paragraph (6) of document A/CN.4/L.713/Add.2 had been left pending, invited Mr. Gaja to read the proposal which he had prepared together with Mr. Pellet.

2. Mr. GAJA (Special Rapporteur) proposed that, to meet Mr. Pellet's request, an excerpt from the advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* be included. The text in question should be inserted in quotation marks after the words "for all States" and the footnote should be amended so that it referred to paragraph 159 of the opinion.

Paragraph (6), as amended, was adopted.

The commentary to draft article 45 [44], as amended, was adopted.

Section C.2, of Chapter VIII of the draft report of the Commission as amended, was adopted.

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

CHAPTER IV. Reservations to treaties (concluded) (A/CN.4/L.706 and Add.1-3)

3. The CHAIRPERSON invited the members of the Commission to continue their consideration of chapter IV.B of the draft report on reservations to treaties (A/CN.4/L.706/Add.2).

B. Consideration of the topic at the present session (concluded)

5. SUMMARY OF THE DEBATE

Paragraph 19

Paragraph 19 was adopted.

Paragraph 20

4. Mr. GAJA proposed that the first sentence should be moved to paragraph 19. The rest of the paragraph should be divided into two parts, the first part ending with the words "and the State accepting the reservation"; the new paragraph would start with "It was further pointed out". The beginning of the penultimate sentence should be worded: "Another view was that, according to the Vienna Convention, the absence of an objection gave rise to a presumption". In the last sentence, the words "It was also understood that" should be replaced by "It was suggested that".

Paragraph 20, as amended, was adopted.

Paragraphs 21 to 24

Paragraphs 21 to 24 were adopted.

Paragraph 25

5. Mr. PELLET (Special Rapporteur) said that the last sentence should be amended to read: "Moreover, the draft guideline did not make it clear which provisions of draft guideline 2.8.1 did not apply."

6. Mr. HMOUD suggested that the following sentence should be inserted after the first sentence: "According to one view, the notion of presumption should be replaced by the notion of tacit acceptance."

Paragraph 25, as amended by Mr. Pellet and Mr. Hmoud, was adopted.

Paragraphs 26 to 28

Paragraphs 26 to 28 were adopted.

Paragraph 29

7. Ms. ESCARAMEIA said that the following words should be inserted at the end of the first sentence: "and that the title of the guideline did not reflect its contents because the position taken on a reservation could be an objection."

Paragraph 29, as amended, was adopted.

Paragraph 30

8. Mr. PELLET (Special Rapporteur) said that the words "such a regime would conform" at the end of the paragraph should be amended to read: "such a regime should conform".

9. The CHAIRPERSON said that Ms. Escarameia had circulated a proposal in writing which read:

"With regard to draft guideline 2.8.12, some members considered that acceptances should not have in all circumstances a final and irreversible nature. It was pointed out that an express acceptance should be considered final and irreversible only 12 months after the reservation was made because that was the period that applied, by their nature, to tacit acceptances."

10. Mr. PELLET (Special Rapporteur) said that he was astonished by the word "because" in the second sentence of Ms. Escarameia's proposal. What followed that word was not an explanation but a comparison. He therefore suggested that the end of the sentence should be replaced by the words: "as is the case with tacit acceptances".

11. Mr. NOLTE asked why the two sentences had been separated. As to substance, he seemed to recall that the opinion expressed in the second sentence had also been expressed by the members who had formulated the opinion expressed in the first sentence. Thus, the second sentence should begin with the words: "They pointed out".

12. Ms. ESCARAMEIA said that Mr. Pellet was right and that she endorsed his proposed amendment. As to Mr. Nolte's proposal, the members in question were not exactly the same and it would thus be preferable to retain the words "It was also pointed out".

Paragraph 30, as amended, was adopted.

Paragraphs 31 to 32

Paragraphs 31 to 32 were adopted.

6. SPECIAL RAPPORTEUR'S CONCLUDING REMARKS

Paragraphs 33 to 42

Paragraphs 33 to 42 were adopted.

Paragraph 43

13. Mr. PELLET (Special Rapporteur) said that, at the beginning of the first sentence of the French version, the words “*il était d'accord que son titre*” should be replaced by “*il convenait que son titre*” and that, at the beginning of the second sentence of both versions, the words “the expression relating to legal effects” should be replaced by “what was said relating to legal effects”.

Paragraph 43, as amended, was adopted.

Paragraph 44

Paragraph 44 was adopted.

Section B, as reproduced in document A/CN.4/L.706/Add.2, as amended, was adopted.

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

REPORT ON THE MEETING WITH HUMAN RIGHTS TREATY BODIES PREPARED BY THE SPECIAL RAPPORTEUR (ILC(LIX)/RT/CRP.1³⁸³)

14. The CHAIRPERSON invited the Special Rapporteur to speak on his report on the meeting with human rights treaty bodies, which had taken place on 15 and 16 May at the United Nations Office at Geneva on the Commission's initiative.

15. Mr. PELLET (Special Rapporteur) said that the meeting with the human rights treaty bodies, which had focused primarily on the question of reservations to human rights instruments, had provided an opportunity for a fruitful exchange of views, of which it would be a shame not to have any record. Accordingly, he had prepared, under his own responsibility, a report (ILC(LIX)/RT/CRP.1), which he offered to place on the Commission's website; a reference to that effect could be included in chapter X of the Commission's report.

16. The CHAIRPERSON, speaking as a member of the Commission, pointed out that the Commission's website was an official context and that all members would have to be consulted in that regard.

17. Mr. PELLET (Special Rapporteur) read out the first footnote of his report:

“The present report—which is not a ‘statement of conclusions’—was prepared solely by the Special Rapporteur on reservations to treaties. It was submitted for opinion to outside participants and to those members of the Commission who had made introductory presentations, but in no way engages their responsibility.”

18. Mr. NOLTE said that, if the report was to be placed on the Commission's website, the footnote would have to be amended to indicate more clearly that the text did not engage the Commission's responsibility.

19. Mr. VALENCIA-OSPINA said that he wondered whether the document in question should not instead be annexed to the tenth report on reservations to treaties.³⁸⁴

³⁸³ Mimeographed, available on the Commission's website, in English and French only, documents of the fifty-ninth session.

³⁸⁴ *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/558 and Add.1–2.

20. Mr. GAJA said that the report could be placed on the Commission's website and also be the subject of a document with restricted distribution, but still accessible to the public.

21. Mr. PELLET (Special Rapporteur) said that nothing prevented him from annexing the report to his tenth report on reservations to treaties, but it would be better to make it available on the Commission's website, with an amendment to the footnote along the lines suggested by Mr. Nolte.

22. The CHAIRPERSON said he took it that the members of the Commission wished to place document ILC(LIX)/RT/CRP.1 on the Commission's website.

It was so decided.

CHAPTER VI. *Expulsion of aliens* (A/CN.4/L.707/Rev.1)

23. The CHAIRPERSON invited the members of the Commission to consider chapter VI of the draft report on the expulsion of aliens, notwithstanding the absence of the Special Rapporteur on the topic.

A. **Introduction**

Paragraphs 1 to 4

Paragraphs 1 to 4 were adopted.

Section A was adopted.

B. **Consideration of the topic at the present session**

Paragraphs 5 to 14

Paragraphs 5 to 14 were adopted.

Paragraph 15

24. Mr. PELLET, referring to the French version, said that the word “*énoncer*” in the third sentence should be replaced by “*mentionner*”.

Paragraph 15, as amended in the French version, was adopted.

Paragraphs 16 and 17

Paragraphs 16 and 17 were adopted.

Paragraph 18

25. Mr. PELLET said that the words “or an obligation to expel them” at the end of the second sentence should be deleted because it suggested that a State could be bound by an obligation to expel enemy aliens, and that seemed absurd.

26. The CHAIRPERSON said that it would be difficult to take a decision on Mr. Pellet's suggestion without checking with the Special Rapporteur, who was solely responsible for the content of the introductory part of the chapter.

Paragraph 18, as amended, was adopted, subject to the Special Rapporteur's approval.

Paragraphs 19 to 25

Paragraphs 19 to 25 were adopted.

Paragraph 26

27. Mr. GAJA suggested that the word “interests” in the first sentence should be replaced by “situation” and that the words “in international zones” at the end of the sentence should be deleted.

28. Mr. PERERA said that, in the penultimate sentence, the words “in the territory” should be replaced by “in the international zone” because that was more in keeping with the question addressed in the paragraph, namely, non-admission.

Paragraph 26, as amended, was adopted.

Paragraphs 27 to 32

Paragraphs 27 to 32 were adopted.

Paragraph 33

29. Mr. GAJA said that the paragraph was unnecessary and should be deleted, since the question of the non-expulsion by a State of its nationals was dealt with in paragraphs 44 to 50.

It was so decided.

Paragraphs 34 to 37

Paragraphs 34 to 37 were adopted.

Paragraph 38

30. Mr. VÁZQUEZ-BERMÚDEZ proposed that the last sentence should be deleted because the view that it referred to had not been explained, it was unnecessary in the light of the content of the first sentence and it had become irrelevant, the Drafting Committee having decided not to include a definition of the concept of “territory”.

31. Mr. WISNUMURTI proposed that the words “or archipelagic waters” should be inserted in the last part of the second sentence, which would then read: “in the territorial sea, internal waters or archipelagic waters of a State”.

Paragraph 38, as amended, was adopted.

Paragraph 39

Paragraph 39 was adopted.

Paragraph 40

32. Ms. ESCARAMEIA, noting that it was her opinion which had been reflected in the second sentence, said that the words “considered by the Special Rapporteur as” should be inserted after “whereby only the rules” and the words “, because they derived from sovereignty,” inserted after “in the international legal order”.

Paragraph 40, as amended, was adopted.

Paragraph 41 to 43

Paragraphs 41 to 43 were adopted.

Paragraph 44

33. Mr. VARGAS CARREÑO said that, in fact, a majority of members had approved the inclusion of a provision relating to expulsion of nationals; thus, the words “A number” should be replaced by “A majority”.

Paragraph 44, as amended, was adopted.

Paragraphs 45 and 46

Paragraphs 45 and 46 were adopted.

Paragraph 47

34. Mr. GAJA said that, in order better to reflect the debate, the fourth sentence should be amended to read: “Expulsion of nationals could at best be justified, in extreme cases, in terms of a state of necessity.”

Paragraph 47, as amended, was adopted.

Paragraphs 48 to 51

Paragraphs 48 to 51 were adopted.

Paragraph 52

35. Mr. VÁZQUEZ-BERMÚDEZ pointed out that the first sentence of paragraph 52 of the English version said exactly the opposite of what was stated in the first sentence of the original French version and in the Spanish version. The English translation of the sentence therefore needed to be corrected.

Paragraph 52 was adopted with the correction to the English text.

Paragraphs 53 to 60

Paragraphs 53 to 60 were adopted.

Paragraph 61

36. Mr. PERERA recalled that a number of members, including himself, had referred to the need for a separate article on migrant workers, given their vulnerability, and proposed that this could be stated, for example, by adding the following sentence: “Some members suggested adding a separate article on migrant workers, having regard to their particular vulnerability.”

Paragraph 61, as amended, was adopted.

Paragraphs 62 to 83

Paragraphs 62 to 83 were adopted.

Section B, of Chapter VI of the draft report of the Commission as amended, was adopted.

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

CHAPTER X. Other decisions and conclusions of the Commission (A/CN.4/L.715 and Add.1)

37. The CHAIRPERSON proposed that the Commission should adopt the part of chapter X of the report contained in document A/CN.4/L.715, which had already

been adopted by the Planning Group (see the 2951st meeting, above, paragraphs 65–82).

The part of sections A and B of Chapter X contained in document A/CN.4/L.715 was adopted.

38. The CHAIRPERSON invited the members of the Commission to adopt the part of chapter X of the report contained in document A/CN.4/L.715/Add.1.

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

2. COST-SAVING MEASURES

Paragraph 1

Paragraph 1 was adopted.

4. INCLUSION OF NEW TOPICS ON THE PROGRAMME OF WORK OF THE COMMISSION AND ESTABLISHMENT OF WORKING GROUPS TO CONSIDER FEASIBILITY OF CERTAIN TOPICS

Paragraph 2

39. Mr. VALENCIA-OSPINA thanked the Commission for appointing him Special Rapporteur on the topic “Protection of persons in the event of disasters”. He asked the Commission to approve his request for the Secretariat to prepare a background study on the topic, initially limited to natural disasters. If that request was granted, a paragraph 2 *bis* would need to be added to that effect.

40. The CHAIRPERSON said that the Secretariat would take care of that matter.

41. Ms. ESCARAMEIA asked whether it might not be possible to expand the topic to include other types of disasters.

42. Mr. VALENCIA-OSPINA said that it was up to the Commission to decide the exact scope of the work. In any event, his preliminary study would focus on that initial aspect of the topic.

Paragraph 2 was adopted.

Paragraph 3

43. Mr. KOLODKIN, speaking as Special Rapporteur on the topic “Immunity of State officials from foreign criminal jurisdiction”, asked the Commission to request the Secretariat to prepare a background study on the topic.

Paragraph 3 was adopted.

Paragraph 4

44. Mr. PELLET said it should be stated that the opened Working Group referred to in the first sentence had worked on the basis of a paper prepared by Mr. McRae and Mr. Perera.

Paragraph 4, as amended, was adopted.

9. MEETING WITH UNITED NATIONS HUMAN RIGHTS EXPERTS

45. After a discussion in which Mr. NOLTE, the CHAIRPERSON and Mr. PELLET took part, it was proposed that the title of subsection 9 should be amended to read: “Meeting with human rights experts”.

It was so decided.

Paragraph 5

46. Mr. CAFLISCH said that, for consistency’s sake, the footnote whose reference was placed after “human rights experts” in the second sentence should be amended to read: “The participants were”. He also pointed out that Mr. Vincent Berger, whose name appeared in the footnote, was Jurisconsult at the European Court of Human Rights.

47. Mr. PELLET said that the words “representatives from human rights treaty bodies” should be avoided and that it would be better to refer to “members” of those bodies. He also suggested that the full stop at the end of the first sentence should be replaced by a semi-colon and that the following phrase should be added: “experts from regional organizations were also invited”. With regard to the above-mentioned footnote, it seemed to him that it was incorrect to refer to the “former Sub-Commission on the Promotion and Protection of Human Rights”, since legally speaking, it had not yet been disbanded. If his impression was correct, then the prefix “ex-” should be deleted.

48. Ms. ARSANJANI (Secretary to the Commission) said that the Secretariat would check on that question.

Paragraph 5, as amended, was adopted.

C. Cooperation with other bodies

Paragraphs 6 to 11

Paragraphs 6 to 11 were adopted.

D. Representation at the sixty-second session of the General Assembly

Paragraph 12

Paragraph 12 was adopted.

Paragraph 13

49. The CHAIRPERSON said that paragraph 13 should read: “At its 2954th meeting, on 9 August 2007, the Commission requested Mr. Kamto, Special Rapporteur on the topic ‘Expulsion of aliens’, to attend the sixty-second session of the General Assembly, on 4 December 1989, under the terms of paragraph 5 of General Assembly resolution 44/35.”

Paragraph 13, as amended, was adopted.

E. International Law Seminar

Paragraphs 14 to 18

Paragraphs 14 to 18 were adopted.

Paragraph 19

50. Mr. VARGAS CARREÑO said that he was the former Executive Secretary of the Inter-American Commission of Human Rights, not the former Secretary-General of the Inter-American Commission of Human Rights, as indicated in paragraph 19.

Paragraph 19, as amended, was adopted.

Paragraph 20

51. Mr. McRAE said that the words “and they also attended” should be replaced by “where they attended” and that the words “Disputes Settlement System” in the English version should be corrected to read “Dispute Settlement System”.

Paragraph 20, as amended, was adopted.

Paragraphs 21 to 27

Paragraphs 21 to 27 were adopted.

52. Mr. CANDIOTI said that, before chapter X was adopted, he would like to refer again to document A/CN.4/L.715. Following the amendment to paragraph 4 of document A/CN.4/L.715/Add.1, the words “on the basis of a paper prepared by Mr. Nolte” should be added at the end of paragraph 5 of A/CN.4/L.715.

It was so decided.

The part of section A and sections C, D and E contained in document A/CN.4/L.715/Add.1, as amended, were adopted.

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

The meeting rose at 1.05 p.m.

2955th MEETING

Friday, 10 August 2007, at 10.10 a.m.

Chairperson: Mr. Ian BROWNLIE

Present: Mr. Cafilisch, Mr. Candiotti, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Mr. Yamada.

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

CHAPTER II. Summary of the work of the Commission at its fifty-ninth session (concluded)* (A/CN.4/L.711)

Paragraphs 7 to 9 (concluded)*

1. The CHAIRPERSON invited the Commission to resume its consideration of chapter II of its draft report (A/CN.4/L.711) and drew attention to amendments that had been made to paragraphs 7, 8 and 9 as agreed at the 2953rd meeting. The new text read:

* Resumed from the 2953rd meeting.

“7. The Commission set up the Planning Group to consider its programme, procedures and working methods (chap. X, sec. A). A Working Group on the long-term programme of work was established, under the Chairpersonship of Mr. Enrique Candiotti, which will submit its final report to the Commission at the end of the current quinquennium topic (chap. X, sect. A.2). The Commission decided to include in its current programme of work two new topics, namely ‘Protection of persons in the event of disasters’ and ‘Immunity of State officials from foreign criminal jurisdiction’. In this regard, it decided to appoint Mr. Eduardo Valencia-Ospina as Special Rapporteur for the former topic and Mr. Roman A. Kolodkin as Special Rapporteur for the latter topic (chap. X, sect. A.4). The Commission also established a Working Group on the most-favoured-nation clause under the Chairpersonship of Mr. Donald McRae to examine the possibility of considering the topic ‘Most-favoured-nation clause’ (chap. X, sect. A.4).

“8. The Commission continued its traditional exchanges of information with the International Court of Justice, the Inter-American Juridical Committee, the Asian–African Legal Consultative Organization, the European Committee on Legal Cooperation and the Committee of Legal Advisers on Public International Law of the Council of Europe (chap. X, sect. D). The Commission also organized a meeting with United Nations and other experts in the field of human rights, which was devoted to discussions on reservations to human rights treaties (chap. X, sect. A.9). The Commission also held an informal meeting with the International Committee of the Red Cross on matters of mutual interest (chap. X, sect. D).

“9. An international law seminar was held with 25 participants of different nationalities. Members of the Commission gave lectures and were involved in other activities concerning the seminar (chap. X, sect. E).”

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

CHAPTER IX. The obligation to extradite or prosecute (aut dedere aut judicare) (A/CN.4/L.714 and Add.1)

2. The CHAIRPERSON drew attention to the portion of the chapter contained in document A/CN.4/L.714.

A. Introduction

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

B. Consideration of the topic at the present session

Paragraph 3

Paragraph 3 was adopted.

1. INTRODUCTION BY THE SPECIAL RAPporteur

Paragraph 4

Paragraph 4 was adopted.