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Summary record of the 2967th meeting

Topic:
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Shared natural resources (*continued*)* (A/CN.4/588, sect. B, A/CN.4/591, A/CN.4/595 and Add.1, A/CN.4/L.722, A/CN.4/L.724)

[Agenda item 4]

NOTE BY THE SPECIAL RAPPORTEUR REGARDING A PREAMBLE

33. Mr. YAMADA (Special Rapporteur) introduced the draft preamble contained in document A/CN.4/L.722. The draft had been prepared on the basis of precedents elaborated by the Commission and various treaties on groundwater resources. It referred to the importance of groundwater; Article 13, paragraph 1 (*a*) of the Charter of the United Nations; General Assembly resolution 1803 (XVII) of 14 December 1962 on permanent sovereignty over natural resources; the Rio Declaration,⁸⁷ and Agenda 21,⁸⁸ the need to protect groundwater resources; the vulnerability of aquifers to pollution; the need to ensure the development of groundwater resources in the context of the optimum and sustainable development of water resources for present and future generations; the importance of international cooperation and good-neighbourliness; the special needs of developing countries; and the importance of promotion of international cooperation.

34. He requested the Commission to refer the draft preamble to the Drafting Committee.

It was so decided.

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

[Agenda item 1]

35. Mr. COMISSÁRIO AFONSO (Chairperson of the Drafting Committee) announced that the Drafting Committee on the topic of responsibility of international organizations would be chaired by himself, and was composed of the following members: Mr. Brownlie, Mr. Dugard, Mr. Fomba, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Singh, Mr. Valencia-Ospina, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Ms. Xue and Mr. Yamada, together with Mr. Gaja (Special Rapporteur) and Ms. Escarameia (Rapporteur, *ex officio*).

36. Mr. CAFLISCH (Chairperson of the Working Group on effects of armed conflicts on treaties) said that the Working Group would be composed of Mr. Brownlie (Special Rapporteur), Mr. Comissário Afonso, Mr. Dugard, Mr. Fomba, Ms. Jacobsson, Mr. McRae, Mr. Niehaus, Mr. Ojo, Mr. Perera, Mr. Saboia, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue and Ms. Escarameia (Rapporteur, *ex officio*).

The meeting rose at 12.20 p.m.

* Resumed from the 2959th meeting.

⁸⁷ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, Annex I.

⁸⁸ *Ibid.*, Annex II.

2966th MEETING

Friday, 23 May 2008, at 10.05 a.m.

Chairperson: Mr. Edmundo VARGAS CARREÑO

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. McRae, Mr. Nolte, Mr. Ojo, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.

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

[Agenda item 1]

1. The CHAIRPERSON said that the one-and-a-half-day seminar with Legal Advisers, held on 19 and 20 May 2008, had been a resounding success. He wished to thank all those who had contributed to organizing the meeting, including the coordinating committee chaired by Mr. Pellet, the Secretariat, and especially Ms. Arsanjani, Secretary to the Commission, for their invaluable support and great efficiency in making the requisite arrangements.

2. Many interesting issues had been raised at the seminar. Particularly useful discussions had been held on the questions of qualifications of members; the procedure for their election; topics for consideration by the Commission; its methods of work; and the outcome of that work. An *aide-memoire* on the outcome of the seminar would be prepared by the Secretariat in due course.

3. Mr. CANDIOTI invited members to inform him of their interest in participating in the work of the Working Group on the responsibility of international organizations.

4. The CHAIRPERSON said that the meeting would be adjourned to enable members to review the results of the meeting with legal advisers.

The meeting rose at 10.10 a.m.

2967th MEETING

Tuesday, 27 May 2008, at 10.05 a.m.

Chairperson: Mr. Edmundo VARGAS CARREÑO

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

Reservations to treaties⁸⁹ (A/CN.4/588, sect. A, A/CN.4/600,⁹⁰ A/CN.4/L.723 and Corr.1,⁹¹ A/CN.4/L.739 and Corr.1,⁹² A/CN.4/L.740⁹³)

[Agenda item 2]

NOTE BY THE SPECIAL RAPPORTEUR

1. The CHAIRPERSON invited the members of the Commission to consider the note prepared by the Special Rapporteur on a draft guideline 2.1.9.⁹⁴

2. Mr. PELLET (Special Rapporteur) explained that, after proposing draft guideline 2.6.10, on statement of reasons for objections,⁹⁵ he had realized that the Guide to Practice lacked a corresponding guideline on statement of reasons for reservations themselves. The note he was presenting sought to rectify that oversight. In fact, it was as useful to give reasons for a reservation as for an objection, to assist all those called upon to assess the scope and validity of the reservation, namely other States parties, treaty monitoring bodies and dispute settlement bodies. A statement of reasons was also useful as a means of enabling the reserving State to demonstrate the merits of its reservation and explain why there were difficulties in applying the treaty in its entirety, as was illustrated by the example the reservation of Barbados to article 14 of the International Covenant on Civil and Political Rights given in paragraph 10 of his note.

3. It should, however, be made clear that while the statement of reasons for a reservation could shed light on those reasons and assist in understanding it, it could not add to or subtract from the reservation itself. Even when a lengthy statement of reasons was provided, a vague reservation would remain vague. Furthermore, while it should be recommended that States give the reasons for their reservations, as well as for their objections, it would nevertheless be going too far to oblige them to do so. The guidelines were simply recommendations, and too rigid a formulation would go well beyond positive law and the spirit of the provisions concerning reservations in the 1969 and 1986 Vienna Conventions, which left States plenty of room for manoeuvre.

4. The idea of including a guideline recommending that reservations should be accompanied by a statement of reasons had already commanded a broad consensus at the Commission's previous session. It would thus seem that draft guideline 2.1.9 could be referred to the Drafting

Committee, which would ensure that it was harmonized with the draft guideline on statement of reasons for objections.

Draft guideline 2.1.9 (Statement of reasons) was referred to the Drafting Committee.

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

[Agenda item 1]

5. Mr. CANDIOTI (Chairperson of the Working Group on the responsibility of international organizations) announced that the Working Group would be composed of the following members: Mr. Comissário Afonso, Ms. Escarameia (Rapporteur, *ex officio*), Mr. Gaja (Special Rapporteur), Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. McRae, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vascianie, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Ms. Xue and Mr. Yamada.

The meeting rose at 10.20 a.m.

2968th MEETING

Thursday, 29 May 2008, at 10.05 a.m.

Chairperson: Mr. Edmundo VARGAS CARREÑO

Present: Mr. Brownlie, Mr. Cafilisch, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Ojo, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vascianie, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Ms. Xue, Mr. Yamada.

Tribute to the memory of Bernhard Graefrath and Sir Francis Vallat, former members of the Commission

1. The CHAIRPERSON said he had received the sad news that two former members of the Commission had passed away. The Commission had learned only recently of the death of Bernhard Graefrath more than a year previously. Professor Graefrath had been a member of the Commission from 1987 to 1991. The Commission had also been informed of the death of Sir Francis Vallat. He had had the privilege of knowing Sir Francis personally and had had many opportunities to appreciate his outstanding human and professional qualities, as well as his valuable contribution to the work of the Commission. Sir Francis had been a member of the Commission from 1973 to 1981.

At the invitation of the Chairperson, the members of the Commission observed a minute of silence.

⁸⁹ For the text of the draft guidelines and the commentaries thereto provisionally adopted so far by the Commission, see *Yearbook ... 2007*, vol. II (Part Two), chap IV.

⁹⁰ Reproduced in *Yearbook ... 2008*, vol. II (Part One).

⁹¹ Mimeographed; available on the Commission's website.

⁹² *Idem*.

⁹³ *Idem*.

⁹⁴ Note by the Special Rapporteur on draft guideline 2.1.9 on the statement of reasons for objections, *Yearbook ... 2007*, vol. II (Part One), document A/CN.4/586.

⁹⁵ *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/574, para. 111. For the discussion of this draft guideline, see *Yearbook ... 2007*, vol. II (Part Two), paras. 60, 81 and 103.