

Document:-
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Summary record of the 2997th meeting

Topic:
<multiple topics>

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Paragraph 6

92. Mr. GAJA said that he had no objection to the contents but thought the paragraph seemed out of place, since it did not ask for views or information on issues of specific interest to the Commission.

93. Mr. VALENCIA-OSPINA (Special Rapporteur) said that the paragraph referred to his intention to solicit replies from the United Nations and IFRC to the following question, which he proposed should be included in paragraph 6: “How has the United Nations system institutionalized roles and responsibilities at the global and country levels with regard to assistance to affected populations and States in the event of disasters, in the disaster response phase but also in the pre- and post-disaster phases, and how does it relate in each of these phases with actors such as States, other international organizations, the Red Cross Movement, NGOs, specialized national response teams, national disaster management authorities and other relevant actors?”

94. The question had been drafted in response to the comments by members of the Commission concerning the need for clear information as to how the main non-State actors went about providing assistance in the event of disaster. He had consulted with OCHA and IFRC, and both had expressed readiness to provide answers to that question.

95. Following a procedural discussion in which Mr. GAJA, Mr. NOLTE and Ms. ESCARAMEIA (Rapporteur) took part, Mr. McRAE proposed that the text read out by the Special Rapporteur should be substituted for the current text of paragraph 6.

Paragraph 6, as amended, was adopted.

Chapter III as a whole, as amended, was adopted.

The meeting rose at 5.55 p.m.

2997th MEETING

Friday, 8 August 2008, at 10.10 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. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Ojo, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Mr. Yamada.

Filling of casual vacancies in the Commission (A/CN.4/602 and Add.1)

1. The CHAIRPERSON announced that the Commission was required to fill the seat left vacant by the resignation of Mr. Ian Brownlie. The candidate's curriculum vitae

had been communicated to the members. The election would take place, as was customary, in a private meeting.

The meeting was suspended at 10.15 a.m. and resumed at 10.30 a.m.

2. The CHAIRPERSON announced that the Commission had elected Sir Michael Wood to fill the seat vacated by Mr. Brownlie.

3. Mr. YAMADA, while welcoming the designation of a successor to Mr. Brownlie, expressed disagreement with the election procedure. Unlike elections of Bureau members, special rapporteurs or chairs of working groups, which were held in secret and in private as strictly internal matters and the results of which were announced at a public meeting without disclosure of the details of the votes cast, the election of members of the Commission, which was not an internal matter, was held at a public meeting of the General Assembly. As eligible candidates were nominated by Member States, in accordance with article 3 of the Statute of the Commission, details of the votes cast were disclosed in accordance with the principles of fairness and transparency. In the case of casual vacancies, the Commission was mandated by its Statute to fill the vacancy itself. In doing so, it had a duty to demonstrate the same transparency, but at previous elections casual vacancies had sometimes been filled by acclamation or by recognizing a candidate nominated by a member, or else the result of the vote had not been announced at a public meeting. Although he bore his share of responsibility in some of those cases, he hoped that the Commission would reconsider its practice in future elections.

4. Ms. ESCARAMEIA expressed strong support for Mr. Yamada's statement. She wished to place on record that she had not taken part in the election because she had serious doubts about the legality of the procedure followed. She hoped that in future the Commission would apply rule 140 of the rules of procedure of the General Assembly in such circumstances.

Draft report of the Commission on the work of its sixtieth session (concluded)

CHAPTER XII. *Other decisions and conclusions of the Commission* (A/CN.4/741)

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

5. The CHAIRPERSON invited the members of the Commission to adopt paragraphs 1 to 3 (which had already been adopted (2988th meeting, paras. 16–30) in the form of the report of the Planning Group (A/CN.4/L.742)).

Paragraphs 1 to 3 were adopted.

Paragraph 4

Paragraph 4 was adopted.

Paragraph 5

6. Mr. BROWNLIE said that it was customary to refer to “the Chatham House rules” rather than “the Chatham House rule”.

Paragraph 5, as amended, was adopted.

Paragraphs 6 and 7

Paragraphs 6 and 7 were adopted.

Paragraph 8

7. Ms. ESCARAMEIA (Rapporteur) proposed inserting the phrase “to which all members of the Commission were invited” after the reference to the Munich colloquy in the footnote.

Paragraph 8, as amended, was adopted.

Paragraphs 9 and 10

Paragraphs 9 and 10 were adopted.

Paragraph 11

8. Mr. VALENCIA-OSPINA proposed replacing “the idea that” in the last sentence with “the recognition that”.

Paragraph 11, as amended, was adopted.

Paragraph 12

Paragraph 12 was adopted.

Paragraph 13

9. Mr. BROWNLIE, supported by Mr. NOLTE, said that it would be preferable, in order to avoid confusion, to delete the words “either as binding instruments in themselves or” in the fifth sentence.

Paragraph 13, as amended, was adopted.

Paragraph 14

Paragraph 14 was adopted.

10. Mr. HASSOUNA deplored the fact that Mr. Vas-ciannie’s document on the rule of law had not yet been translated into Arabic. He requested the Secretariat to provide the Arabic-speaking members of the Commission with the translation as soon as it became available, so that they could make any necessary corrections before the document was submitted to the General Assembly.

Paragraphs 15 to 20

Paragraphs 15 to 20 were adopted.

Paragraphs 21 and 22

11. The CHAIRPERSON noted that the Commission as a whole had not yet adopted the two decisions mentioned in paragraphs 21 and 22, which had only been adopted by the Planning Group. If he heard no objection, he would take it that the members wished to confirm the decisions in question.

It was so decided.

Paragraphs 21 and 22 were adopted.

Paragraph 23

Paragraph 23 was adopted.

Paragraph 24

12. Mr. GAJA proposed inserting the words “who attended the meeting” after “members” at the beginning of the footnote and deleting from the following list the names of the members who had not attended.

Paragraph 24, as amended, was adopted.

Paragraphs 25 to 27

Paragraphs 25 to 27 were adopted.

Paragraph 28

13. Mr. GAJA proposed replacing “all” in the last sentence of the footnote with “any of”.

Paragraph 28, as amended, was adopted.

Paragraphs 29 and 30

Paragraphs 29 and 30 were adopted.

B. Date and place of the sixty-first session of the Commission

Paragraph 31

Paragraph 31 was adopted.

C. Cooperation with other bodies

Paragraphs 32 and 33

Paragraphs 32 and 33 were adopted.

Paragraph 34

14. Ms. ESCARAMEIA (Rapporteur) proposed deleting the comma after “by” in the first sentence and the words “addressed the Commission” after “Mr. Antonio Fidel Pérez”.

Paragraph 34, as amended, was adopted.

Paragraph 35

15. Ms. ESCARAMEIA (Rapporteur) proposed adding “(CAHDI)” after the name of the second committee and replacing “Chairperson of the Committee” with “Chair of CAHDI”.

Paragraph 35, as amended, was adopted.

Paragraph 36

16. The CHAIRPERSON, speaking as a member of the Commission, expressed regret that there had been no time for an exchange of views on such an important subject as cooperation with AALCO.

17. Mr. CANDIOTI said that the same problem had occurred, *inter alia*, during the visit by the President of the International Court of Justice. He proposed as a remedial measure that in future representatives of bodies with which the Commission cooperated should take the floor at the beginning of the meeting concerned instead of one hour before it rose.

18. Mr. SABOIA said that “31 August 2008” should be replaced by “31 July 2008” in paragraph 36.

Paragraph 36, as amended, was adopted.

Paragraph 37

19. Mr. VALENCIA-OSPINA said that “President of the Court” should be replaced with “President of the Tribunal”.

Paragraph 37, as amended, was adopted.

Paragraph 38

20. Ms. ESCARAMEIA (Rapporteur) said that, although it was customary to refer readers to the summary records, such a referral was unhelpful in the case of the meeting on cooperation with ICRC. One might at least mention the topics covered by the exchange of views, such as the responsibility of international organizations and the definition of an armed conflict.

21. Mr. CANDIOTI said that the same applied to the Commission’s exchanges of views with representatives of all the other bodies with which it cooperated, especially since the summary records in question would not be published until the Greek calends.

22. Mr. BROWNLIE expressed support for Ms. Escarameia’s proposal. The meeting with the ICRC representatives had been very useful and he felt that the substance at least should be reported.

23. Mr. NOLTE concurred with the views just expressed. He proposed that the records of the meetings should be posted on the Commission’s website after any necessary corrections had been made.

24. Ms. ESCARAMEIA proposed that the written statements made by representatives of bodies with which the Commission cooperated should also be published on the Commission’s website unless they were of a confidential nature.

Paragraph 38, as amended, was adopted.

Paragraph 39

25. Mr. McRAE proposed replacing “optimize on” in the first sentence with “ensure” and “of enhancing” with “for enhancing”.

26. Ms. ESCARAMEIA (Rapporteur) proposed amending the end of the paragraph to read: “paying particular attention to the relationship between the work of the Commission and of the body concerned”.

Paragraph 39, as amended, was adopted.

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

Paragraph 40

Paragraph 40 was adopted.

27. The CHAIRPERSON proposed inserting the following article 40 *bis*: “At its 2997th meeting, on 8 August 2008, the Commission requested Mr. Giorgio Gaja, Special Rapporteur on the topic of ‘Responsibility of international organizations’, to attend the sixty-third session of the General Assembly under the terms of paragraph 5 of General Assembly resolution 44/35.”

Paragraph 40 bis was adopted.

E. International Law Seminar

Paragraphs 41 to 43

Paragraphs 41 to 43 were adopted.

Paragraph 44

28. Ms. JACOBSSON said that the title of the lecture she had given was not “The protection of historic wrecks” but “The legal regime of historic wrecks and of maritime graves”.

Paragraph 44, as amended, was adopted.

Paragraphs 45 to 54

Paragraphs 45 to 54 were adopted.

Chapter XII as a whole, as amended, was adopted.

29. Mr. CANDIOTI, reverting to section C (Cooperation with other bodies) and referring to the oral invitation issued by the President of the International Tribunal for the Law of the Sea, Mr. Wolfrum, to the Commission, asked the Chairperson whether he intended to visit the Tribunal himself or whether he had contemplated delegating that prerogative to one or more other members of the Commission.

30. The CHAIRPERSON said that it was a controversial matter that should be discussed in the Commission. When he had mentioned the possibility in the Bureau, some members had been in favour of such a visit and others against. Personally, he thought that the Commission would do well to enhance its profile *vis-à-vis* other bodies, especially the International Tribunal for the Law of the Sea. As he was unable to visit the Tribunal himself, he had put forward the names of other members of the Commission, but his proposal had not secured a consensus.

31. Mr. KOLODKIN and Ms. ESCARAMEIA said that they had both supported the idea as members of the Bureau.

32. Mr. GAJA said that he was not the only Bureau member to harbour doubts about the matter. In his view, it was more important to have contacts with bodies entrusted, like the Commission, with the codification and progressive development of international law, which was certainly not the case for the International Tribunal for the Law of the Sea. Moreover, as the Commission had not received a formal invitation from the Tribunal, he requested the Chairperson, as the Bureau had provisionally agreed, to refrain from taking a decision for the time being and to ask the Planning Group to look into the matter at the Commission’s next session.

33. Mr. CANDIOTI, while acknowledging that the International Tribunal for the Law of the Sea had not yet issued a formal invitation to the Commission, drew attention to the need to decide how the Commission would respond if it did receive an invitation in order to avoid embarrassing the Tribunal.

34. Mr. GALICKI said that, as a member of the Bureau, he had also supported the idea of strengthening relations with the Tribunal. Mr. Candiotti had made a relevant point. It would be a mistake to reject out of hand the idea of cooperating with judicial bodies whose work might prove to be of importance for the Commission.

35. Mr. NOLTE said that, while he shared Mr. Gaja's view, he felt that if a formal invitation was issued to the Commission, it would be impolite to turn it down or not to reply. The Commission should therefore decide how it would respond in such an event.

36. The CHAIRPERSON said that Mr. Wolfrum had issued his invitation to visit the headquarters of the Tribunal in Hamburg (Germany) during his address to the Commission and had encouraged him to pay a visit in a subsequent private conversation. However, the Commission had not yet received a formal invitation. At all events, he was unable to travel to Hamburg himself and had therefore proposed that one or more Commission members should visit the Tribunal instead, although he had not designated anyone in particular.

37. Ms. JACOBSSON said that, in her view, it was important to discuss the response to Mr. Wolfrum's invitation in plenary since it concerned all members of the Commission. While the invitation was perhaps informal, it could not be ignored: that would be impolite and would reflect very badly on the Commission. Furthermore, there were ample reasons for exchanging views with the President of the International Tribunal on the Law of the Sea, who had raised issues at the current session which had a direct bearing on the Commission's work, such as the fragmentation of international law, diplomatic protection and shared natural resources. More generally, the Commission should not underestimate the importance of its relations with other bodies, especially the special criminal tribunals. It might also consider holding less formal discussions with the representatives of such bodies in the future. On the question of who should represent the President in Hamburg, she assured the members of the Commission that she had no personal interest in visiting the city and that her main concern was to ensure that the Tribunal was treated with the respect it deserved.

38. Mr. SABOIA expressed support for Mr. Candiotti's proposal and for the views expressed by Ms. Jacobsson. He was in favour of sending a delegation to Hamburg, which would report to the Commission on its exchange of views. He recognized at the same time that Mr. Gaja's concerns were legitimate and should be considered by the Planning Group. Criteria should be established in order to forestall the proliferation of contacts with other bodies.

39. Mr. PETRIČ urged the Commission to focus on the action to be taken on the invitation issued by the President of the International Tribunal for the Law of the Sea and

to avoid engaging in a general discussion of its relations with other bodies. The points raised by Mr. Gaja certainly merited further discussion, but it would be preferable to wait until the next session. With regard to Mr. Wolfrum's informal invitation, the Chairperson of the Commission should take it that he was the person invited and should designate another Commission member to represent him and report to the Commission on his exchange of views.

40. Mr. HMOUD expressed support for Mr. Gaja's view. As a member of the Bureau, he had refrained from commenting on the invitation because it had not been issued formally. If the Chairperson received a formal invitation that he was unable to accept and designated a member of the Commission to represent him, that decision could be endorsed by the Bureau alone, since the person concerned would only represent the Chairperson. If the Commission as a whole was to be represented, a plenary decision would be necessary.

41. Mr. CANDIOTI noted that there was nothing to prevent the Commission from being represented by a member who was a national of the country in which the headquarters of the body concerned was located. Such action had already been taken on several occasions without any adverse consequences. He also wished to express support for Ms. Jacobsson's statement.

42. Mr. GAJA said that if the Chairperson was unable to take up an invitation for personal or financial reasons, it was for the first Vice-Chairperson or, alternatively, the second Vice-Chairperson or the future Chairperson of the Commission to represent him. That was the simplest way of proceeding. Moreover, there was no need to respond immediately.

43. Mr. KOLODKIN, speaking as the future Chairperson of the Commission, said that he would probably be unable to travel to Hamburg.

44. The CHAIRPERSON suggested that he should write to the President of the International Tribunal for the Law of the Sea informing him that he was unable to accept his invitation for personal reasons and requesting him to receive three members of the Commission—Ms. Jacobsson, Mr. Nolte and Mr. Niehaus—who would subsequently report to the Commission on their exchange of views.

It was so decided.

45. The CHAIRPERSON said that, if he heard no objection, he would take it that the members of the Commission wished to adopt the draft report.

It was so decided.

The whole of the draft report of the International Law Commission on the work of its sixtieth session, as amended, was adopted.

Chairperson's concluding remarks

46. The CHAIRPERSON said that the sixtieth session had been particularly productive. The Commission had

adopted on second reading the preamble and a set of draft articles on shared natural resources, and had adopted on first reading its draft articles on the effects of armed conflicts on treaties. It had also made substantial progress in its work on the responsibility of international organizations and on reservations to treaties. The preliminary reports on the protection of persons in the event of disasters and on the immunity of State officials from foreign criminal jurisdiction, two complex and controversial topics, constituted an excellent basis for the Commission's future work on those subjects. As a subsidiary body of the General Assembly, the Commission had a duty to engage in closer dialogue with its parent body, and the

draft instruments that it was currently elaborating were the best means of achieving that aim.

Closure of the session

47. After the traditional exchange of courtesies, during which special tribute was paid to Mr. Brownlie, the CHAIRPERSON declared the sixtieth session of the International Law Commission closed.

The meeting rose at 12.10 p.m.
