

Document:-
A/CN.4/3125

Summary record of the 3125th meeting

Topic:
Draft report of the International Law Commission on the work of its sixty-third session

Extract from the Yearbook of the International Law Commission:-
2011, vol. I

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67. Mr. SABOIA said that it should perhaps be indicated in a footnote that the 1986 Vienna Convention was not yet in force.

68. The CHAIRPERSON, noting the late hour, suggested that the adoption of the introduction be continued at the next meeting.

The meeting rose at 6.05 p.m.

3125th MEETING

Thursday, 11 August 2011, at 10 a.m.

Chairperson: Mr. Maurice KAMTO

Present: Mr. Caflisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Draft report of the International Law Commission on the work of its sixty-third session (*continued*)

CHAPTER IV. *Reservations to treaties (concluded)* (A/CN.4/L.783 and Add.1–8)

F. Text of the Guide to Practice on reservations to treaties, adopted by the Commission at its sixty-third session (*continued*)

2. TEXT OF THE GUIDE TO PRACTICE, COMPRISING AN INTRODUCTION, THE GUIDELINES AND COMMENTARIES THERETO, AN ANNEX ON THE RESERVATIONS DIALOGUE AND A BIBLIOGRAPHY (*continued*)

(a) *Introduction (continued)* (A/CN.4/L.783/Add.8)

1. The CHAIRPERSON invited the Commission to resume its consideration of chapter IV of the draft report, in particular the introduction to the Guide to Practice, contained in document A/CN.4/L.783/Add.8. He recalled that a number of amendments to paragraph (2) had been proposed at the previous meeting.

Paragraph (2) (*concluded*)

2. Mr. HUANG said that during the current session, he had generally refrained from commenting on problems of a linguistic nature. As someone from a country with a tradition of seeking the middle ground, he had taken a low-key approach on certain issues. That did not mean, however, that he would compromise on issues of principle.

3. For China, the Taiwan question was a matter of principle. At an earlier meeting, he had pointed out an error in the Commission's treatment of that question and proposed a reasonable solution. That solution had been rejected, however, perhaps out of a desire to oppose China or for some other ulterior motive. Whatever the case, that was unacceptable.

4. Three of the Vienna Conventions had been cited in paragraph (2) of the introduction to the Guide to Practice, but only two of them had entered into force. When, at the previous meeting, he had queried the status of the 1986 Vienna Convention, the Special Rapporteur had first informed the Commission that it had entered into force but had subsequently had to admit his error. Only 11 international organizations were parties to the 1986 Vienna Convention, yet the Commission had spent weeks discussing the issue of reservations by international organizations.

5. The Sixth Committee had repeatedly asked the Commission to shorten its reports. The excessive length of the commentary to the guidelines contained in the Commission's current report went against the requirements of the General Assembly, imposed an unbearable burden on the Secretariat and made it difficult for members of the Commission to analyse the text in a rational and scientific manner. Was it really necessary to have 50 paragraphs of commentary to a single guideline? A commentary that was 800 pages long would not be widely read; shortening it to 200 pages would result in significant savings.

6. In October 1997, at a colloquium held at United Nations Headquarters to mark the fiftieth anniversary of the establishment of the Commission, he had acknowledged the Commission's achievements but had also referred to the very sharp criticism of some of its work by the international community. Now, as a member of the Commission, he found that the problems were even more serious than he had imagined. What was the Commission's mandate? What sort of legal guidance should it provide to Member States? Instead of wasting human and material resources, the Commission should bring rapidly to a close its consideration of the item on reservations to treaties.

7. His comments at the current and previous meetings might have offended some members, but everything he had said was true. He took full responsibility for all those comments, which he wished to have placed on record and included in the Commission's report to the Sixth Committee.

8. The CHAIRPERSON said that Mr. Huang's statement had been noted.

Paragraph (2) was adopted, with the amendments put forward at the previous meeting.

Paragraphs (3) and (4)

Paragraphs (3) and (4) were adopted.

Paragraph (5)

9. Mr. GAJA said that the opening phrase of the second sentence, "Like the Vienna rules themselves", should be deleted, since it was not appropriate to place the guidelines on the same level as the Vienna Convention.

10. Mr. PELLET (Special Rapporteur) said that he agreed with that remark and proposed rewording the beginning of the sentence to read: "The Vienna rules have a residual nature; the same is true, *a fortiori*, for those contained in the Guide to Practice" [*Les règles de Vienne*]

ont un caractère supplétif; il en va de même, a fortiori, de celles énoncées dans le Guide de la pratique].

11. Mr. GAJA said that the statement was too sweeping. It could not be said that all the Vienna rules were of a residual nature; some simply reproduced the rules of customary international law. No reference should be made to the Vienna regime: it should simply be stated that the rules in the Guide were not intended to be binding on States.

12. The CHAIRPERSON suggested that the second sentence read: “The rules set out in the Guide to Practice have, at best, a residual nature” [*Les règles énoncées dans le Guide de la pratique ont, dans le meilleur des cas, un caractère supplétif*].

Paragraph (5), as amended, was adopted.

Paragraphs (6) and (7)

Paragraphs (6) and (7) were adopted.

Paragraph (8)

13. Mr. VÁZQUEZ-BERMÚDEZ said that the first footnote to the paragraph should be deleted, since it might give the impression that the commentaries had not been reviewed during the current session. In addition, he proposed that in the third sentence, the phrase “which has often been criticized” be deleted.

14. Mr. HUANG said that he disagreed with the point made in the third sentence, namely that long commentaries were necessary.

Paragraph (8), as amended, was adopted.

Paragraphs (9) and (10)

Paragraphs (9) and (10) were adopted.

(b) *Text of the guidelines and the commentaries thereto* (concluded)

4.2.4 *Effect of an established reservation on treaty relations* (concluded)* (A/CN.4/L.783/Add.6)

Commentary (concluded)*

Paragraphs (22) and (23) (concluded)*

15. The CHAIRPERSON invited the members of the Commission to resume their consideration of paragraphs (22) and (23) of the commentary to guideline 4.2.4 (Effect of an established reservation on treaty relations), contained in document A/CN.4/L.783/Add.6.

16. Mr. GAJA said that paragraphs (22) and (23) gave examples of reservations by States that imposed additional obligations on other States. Those reservations thus modified a treaty in a manner that did not correspond to the definition of a reservation in guideline 1.1. He suggested that the Special Rapporteur look into the matter with a view to ensuring consistency in the text.

Paragraphs (22) and (23) were adopted.

The commentary to guideline 4.2.4, as a whole, as amended, was adopted.

* Resumed from the 3122nd meeting.

4.5.3 *Status of the author of an invalid reservation in relation to the treaty* (concluded)** (A/CN.4/L.783/Add.6)

Commentary (concluded)**

Paragraph (20 bis)

17. The CHAIRPERSON invited the Special Rapporteur to present his proposal for a paragraph (20 bis), to be added to the commentary to guideline 4.5.3 (Status of the author of an invalid reservation in relation to the treaty).

18. Mr. PELLET (Special Rapporteur) said that, in response to Mr. Nolte’s comments at the 3123rd meeting, he wished to propose the insertion of a new paragraph, to read:

“(20 bis) The same lack of agreement was evident in the discussion in the Sixth Committee during the sixty-fifth session of the General Assembly and the comments and observations made by Governments on draft guideline 4.5.2 (current guideline 4.5.3), provisionally adopted by the Commission in 2010.^x States were divided into two more or less equal groups, one in favour and one opposed to the positive presumption retained provisionally by the Commission and to the principle of severability of the invalid reservation from the rest of the treaty. All agreed, however, that the intention of the author of the reservation was the key criterion for determining whether the author was bound by the treaty or not, and that the author of the reservation was best placed to explain what that intention was. This led some States to suggest a compromise solution, giving greater weight to the role of the intention; thus, Austria and the United Kingdom proposed to retain the positive presumption of former draft guideline 4.5.2 but to allow authors of reservations to have the last word, by granting them the possibility of expressing a contrary intention.^y Guideline 4.5.3 is closely based on these proposals.”

^x *Yearbook ... 2010*, vol. II (Part Two), pp. 112–121.”

^y *Official Records of the General Assembly, Sixty-fifth Session, Sixth Committee*, 19th meeting (A/C.6/65/SR.19), para. 82 (Austria); and *Yearbook ... 2011*, vol. II (Part One), document A/CN.4/639 and Add.1, comments and observations of Austria on invalid reservations and the United Kingdom on draft guideline 4.5.2 (Status of the author of an invalid reservation in relation to the treaty). See also *Official Records of the General Assembly, Sixty-fifth Session, Sixth Committee*, 21st meeting (A/C.6/65/SR.21), para. 39 (Greece) and *Yearbook ... 2011*, vol. II (Part One), document A/CN.4/639 and Add.1, comments and observations of Switzerland on draft guideline 4.5.2.”

[La même division a marqué les débats au sein de la Sixième Commission durant la soixante-cinquième session de l’Assemblée générale et les commentaires et observations des gouvernements sur le projet de directive 4.5.2 [4.5.3], provisoirement adopté par la Commission en 2010^x, les États se partageant en deux groupes à peu près égaux en faveur ou opposés à la présomption positive retenue provisoirement par la Commission et au principe de séparabilité de la réserve invalide du reste du traité. Cependant les uns et les autres sont convenus que l’intention de l’auteur de la réserve est le

** Resumed from the 3123rd and 3124th meetings.

critère cardinal pour déterminer si son auteur est ou non lié par le traité et que c'est l'auteur de la réserve qui est le mieux placé pour préciser quelle était cette intention. Cela a conduit certains États à suggérer une solution de compromis renforçant le rôle joué par cette intention; dans cet esprit, l'Autriche et le Royaume-Uni ont proposé de conserver la présomption positive de l'ancien projet de directive 4.5.2, mais de laisser à l'auteur de la réserve le dernier mot en lui ouvrant la possibilité d'exprimer une intention contraire^x. La directive 4.5.3 s'inspire étroitement de ces propositions.

^x *Annuaire... 2010*, vol. II (2^e partie), p. 115 à 124.

^y *Documents officiels de l'Assemblée générale, Sixième Commission, soixante-cinquième session, 19^e séance (A/C.6/65/SR.19)*, par. 82 (Autriche); *Annuaire ... 2011*, vol. II (1^{re} partie), document A/CN.4/639 et Add.1, commentaires et observations de l'Autriche sur les réserves non valides et du Royaume-Uni sur le projet de directive 4.5.2 (Statut de l'auteur d'une réserve non valide). Voir aussi *Documents officiels de l'Assemblée générale, Sixième Commission, soixante-cinquième session, 21^e séance (A/C.6/65/SR.21)*, par. 39 (Grèce), et *Annuaire... 2011*, vol. II (1^{re} partie), document A/CN.4/639 et Add.1, commentaires et observations de la Suisse sur le projet de directive 4.5.2.]

Paragraph (20 bis) was adopted.

Paragraphs (51) to (53)

19. The CHAIRPERSON invited the Special Rapporteur to present the other additions that he was proposing for the commentary to guideline 4.5.3.

20. Mr. PELLET (Special Rapporteur) said that he would recommend the addition of three paragraphs after paragraph (50), to read:

“(51) Similarly, the Commission is aware that paragraphs 3 and 4 of guideline 4.5.3 leave open the question of precisely when the expression by the author of the reservation of its intention to be bound—or not—by the treaty without the benefit of its reservation produces its effects.”

[(51) Dans le même esprit, la Commission est consciente que les paragraphes 3 et 4 de la directive 4.5.3 laissent ouverte la question de savoir à quel moment l'expression par l'auteur de la réserve de son intention d'être lié – ou non – par le traité sans sa réserve produit ses effets.]

“(52) If the author declares that it accepts the application of the treaty without the benefit of the reservation, no real problem arises, and the treaty may be deemed to continue to apply for the future, on the understanding that the State or international organization that made the reservation cannot rely on it, either for the past or for the future. It is more difficult to respond to the question raised in the previous paragraph if the author of the declaration intends not to be bound by the treaty; in this scenario, it would no doubt be logical for the author to be considered never to have been bound by the treaty, because the nullity (from the outset) of its reservation led the author not to regard itself as bound. However, such a solution might give rise to great practical difficulties in terms of

reverting to the situation that existed at the time when the State or international organization had expressed its consent to be bound (subject to the reservation).”

[(52) Si sa position déclarée consiste en l'acceptation de l'application du traité sans le bénéfice de la réserve, aucun problème réel ne se pose et l'on peut considérer que le traité continue à s'appliquer pour l'avenir, étant entendu que l'État ou l'organisation internationale auteur de la réserve ne peut se prévaloir de celle-ci ni pour le passé ni pour l'avenir. La réponse à la question posée au paragraphe précédent est plus difficile si l'auteur de la déclaration entend ne pas être lié par le traité; dans cette hypothèse, la logique voudrait sans doute que l'on considère qu'il ne l'a jamais été puisque la nullité de sa réserve (ab initio) l'a conduit à choisir de ne pas se tenir comme étant lié par le traité. Toutefois, une telle solution risque de poser de difficiles problèmes pratiques de rétablissement de la situation existant au moment où l'État ou l'organisation internationale avait exprimé son consentement à être lié (avec la réserve).]

“(53) Since guideline 4.5.3 largely corresponds to the progressive development of international law, it would seem expedient to let practice evolve, although different circumstances might call for different solutions.”

[(53) Comme la directive 4.5.3 relève largement du développement progressif du droit international, il semble opportun de laisser la pratique se déployer, sans que l'on puisse exclure que des circonstances diversifiées appellent des solutions variées.]

21. Mr. HMOUD asked why, in the second sentence of paragraph (52), reference was made to the author of the declaration, rather than to the author of the reservation.

22. Mr. PELLET (Special Rapporteur) explained that in that context, the essential factor was that the State in question was the author of both the reservation and the declaration in which it stated that it was not bound by the treaty because its reservation had not been accepted.

Paragraphs (51) to (53) were adopted.

The commentary to guideline 4.5.3, as amended and completed, was adopted.

5.1.1 *Newly independent States* (concluded) (A/CN.4/L.783/Add.2)

Commentary (concluded)

Paragraphs (19 bis) and (19 ter)

23. The CHAIRPERSON invited Mr. Gaja to present his proposal for two new paragraphs, (19 bis) and (19 ter), to be inserted after paragraph (19) of the commentary to guideline 5.1.1, contained in document A/CN.4/L.783/Add.2.

24. Mr. GAJA said that at the Special Rapporteur's request, he had drafted two additional paragraphs which did not appear to be controversial because they merely repeated what was contained in the 1978 Vienna Convention. Paragraphs (19 bis) and (19 ter) would read:

“(19 bis) According to article 20, paragraph 2, of the 1978 Vienna Convention, ‘a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraphs (a), (b) and (c) of article 19 of the [1969] Vienna Convention on the Law of Treaties’. Paragraph 2 of guideline 5.1.1 provides a reminder that any reservation formulated by a newly independent State when making a notification of succession is subject to the condition of permissibility set out in subparagraphs (a), (b) and (c) of guideline 3.1, which reproduces article 19 of the 1969 and 1986 Vienna Conventions.

“(19 ter) Paragraph 3 of guideline 5.1.1 recalls that the rules set out in Part 2 (Procedure) of the Guide to Practice apply to reservations formulated by a newly independent State when making a notification of succession. This accords with paragraph 3 of article 20 of the 1978 Vienna Convention, which states that ‘[w]hen a newly independent State formulates a reservation in conformity with paragraph 2, the rules set out in articles 20 to 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation’. The reference includes article 20, paragraph 4 (c), of the 1969 Vienna Convention, which provides that ‘an act expressing a State’s consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation’. It follows that a notification of succession containing a reservation will take effect only from that date.”

Paragraphs (19 bis) and (19 ter) were adopted.

The commentary to guideline 5.1.1, as amended, was adopted.

ADDITIONAL AMENDMENTS TO THE GUIDE TO PRACTICE

25. The CHAIRPERSON invited the members of the Commission to continue their consideration of the amendments proposed during previous meetings by Mr. Huang concerning references to reservations made by China that were, in fact, references to the former Republic of China.

26. Mr. Huang was proposing the following: first, that all the references to the People’s Republic of China in the Guide to Practice be maintained; secondly, that references to the “Republic of China”, the “Taiwan authorities” or “China” when it was in fact the “Republic of China” that was meant be maintained, provided that they were accompanied by an explanatory footnote; and, thirdly, that references to “China” which were, in fact, to the Taiwan authorities and which appeared in a list with other States be deleted.

27. Mr. HUANG said that this had been his proposal from the beginning, and he would be grateful if the Commission could accept it, given that it concerned a politically sensitive issue.

28. The CHAIRPERSON said that the other members of the Commission were aware of the sensitivity of the issue for Mr. Huang’s country, but at the same time they were faced with the prospect of departing from the

Commission’s traditions by modifying official documents of the United Nations once the latter had been published and distributed. It was certainly not the Commission’s intention to create problems with respect to the People’s Republic of China. The Special Rapporteur had amply clarified his position, which was that the Government that had represented China in the United Nations prior to 1971 was illegitimate. The Commission had no hidden agenda, but was merely seeking to maintain the integrity of the official documents of the United Nations.

29. Mr. HUANG said that he appreciated those explanations; however, some misunderstandings still persisted, and he would therefore like to make four general points. The first was that the question of Taiwan was an extremely important political issue for the Chinese people, and that fact should be borne in mind by the members of all United Nations bodies, including the International Law Commission. The second was that the People’s Republic of China had declared all international conventions signed and ratified by the Taiwan authorities in the name of China prior to 1971 to be illegal and therefore null and void. It was a fundamental principle of law that illegal actions produced no legal effects. His third point concerned the fact that deleting from a list of several countries a reference to China that was in fact a reference to the authorities of Taiwan Province of China would not have any substantive implications for the Guide to Practice, as the reference was merely one of many examples. His fourth point related to the tradition of the International Law Commission—upheld for some 60 years or more—of working to achieve consensus while respecting any strong objections held on any issue by a member.

30. There were eight references in the Guide to Practice concerning China, three of which had already been rectified. Of the remaining five references, two were acceptable, while the other three concerned actions taken by the Taiwan authorities, and were therefore unacceptable. He had a clear and succinct proposal: simply to delete the references, which were found in (a) the penultimate footnote to paragraph (7) of the commentary to guideline 2.6.6; (b) the first footnote to paragraph (3) of the commentary to guideline 2.8.11; and (c) the antepenultimate footnote to paragraph (3) of the commentary to guideline 3.2.

31. Mr. PELLET (Special Rapporteur) said that he had no problem with deleting the example in the penultimate footnote to paragraph (7) of the commentary to guideline 2.6.6 that referred to China and finding another example to replace it. In the first footnote to paragraph (3) of the commentary to guideline 2.8.11, however, it would be difficult, even scientifically untenable, to remove the reference to the amendment by China, because that would be equivalent to denying something that had actually happened. He proposed instead to add an explanation that, at the time, China had been represented by the illegitimate Government of Taiwan and that the People’s Republic of China had subsequently declared the Taiwan position to be null and void. Reference could also be made to General Assembly resolution 2758 (XXVI) of 25 October 1971, as had been done in the first footnote to paragraph (18) of the commentary to guideline 4.5.3.

32. Lastly, contrary to what Mr. Huang had said, the antepenultimate footnote to paragraph (3) of the commentary to guideline 3.2 did not present a series of examples, but rather was an exhaustive list of States that had taken a particular position during a meeting of the United Nations Conference on the Law of Treaties in 1968. Although he was absolutely opposed to deleting only the reference to “China”, he could, for the sake of reaching consensus, agree to delete the entire list of States in the first sentence of the footnote and to replace it with the words: “See *Summary records* (A/CONF.39/11), footnote XXX above”. The final two sentences (“The representative of Sweden ... (para. 9)”) would be retained.

33. Mr. HUANG said that he could accept the Special Rapporteur’s proposals.

34. Mr. PELLET (Special Rapporteur) said that, in addition, in paragraph (18) of the commentary to guideline 4.5.3, the current example relating to the Republic of China could be replaced with another example, namely the text that appeared in the last footnote to the paragraph.

35. The CHAIRPERSON said he took it that the Commission wished to adopt the following additional amendments to the Guide to Practice: in the penultimate footnote to paragraph (7) of the commentary to guideline 2.6.6, the example referring to China would be replaced with another suitable example; in the first footnote to paragraph (3) of the commentary to guideline 2.8.11, the word “Chinese” would be deleted and the remainder of the footnote would be retained; in the antepenultimate footnote to paragraph (3) of the commentary to guideline 3.2, the first sentence would be replaced with the words: “See *Summary records* (A/CONF.39/11), footnote XXX above” and the two final sentences would be retained; and in paragraph (18) of the commentary to guideline 4.5.3, the example relating to the Republic of China would be replaced with the text that appeared in the last footnote to the paragraph.

It was so decided.

The additional amendments to the Guide to Practice were adopted.

36. Mr. DUGARD said that he wished to have it placed on record that he was unhappy with the procedure followed, namely, changing the historical record.

37. The CHAIRPERSON invited the Commission to consider the portion of chapter IV contained in document A/CN.4/L.783.

A. Introduction

Paragraphs 1 to 5

Paragraphs 1 to 5 were adopted.

B. Consideration of the topic at the present session

Paragraphs 6 to 14

Paragraphs 6 to 14 were adopted.

1. CONSIDERATION OF THE SEVENTEENTH REPORT OF THE SPECIAL RAPPORTEUR

(a) Introduction by the Special Rapporteur

Paragraphs 15 to 18

Paragraphs 15 to 18 were adopted.

(b) Action taken on the seventeenth report

Paragraphs 19 to 21

Paragraphs 19 to 21 were adopted.

C. Recommendation of the Commission concerning the Guide to Practice on reservations to treaties

Paragraph 22

38. Mr. PELLET (Special Rapporteur) proposed the insertion of the following phrase after the words “recommend to the General Assembly”: “to take note of the Guide to Practice and to ensure its widest possible dissemination” [*de prendre note du Guide de la pratique et d’en assurer la plus large diffusion*].

Paragraph 22, as amended, was adopted.

D. Recommendation of the Commission on mechanisms of assistance in relation to reservations to treaties

Paragraph 23

Paragraph 23 was adopted.

E. Tribute to the Special Rapporteur

Paragraph 24 was adopted by acclamation.

Sections A to E of chapter IV, as amended, were adopted.

F. Text of the Guide to Practice on reservations to treaties, adopted by the Commission at its sixty-third session (concluded)

1. TEXT OF THE GUIDELINES CONSTITUTING THE GUIDE TO PRACTICE

Paragraph 25

Paragraph 25 was adopted.

2. TEXT OF THE GUIDE TO PRACTICE, COMPRISING AN INTRODUCTION, THE GUIDELINES AND COMMENTARIES THERETO, AN ANNEX ON THE RESERVATIONS DIALOGUE AND A BIBLIOGRAPHY (concluded)

Paragraph 26

Paragraph 26 was adopted.

39. The CHAIRPERSON drew attention to document A/CN.4/L.783/Add.1, which contained the guidelines constituting the Guide to Practice, adopted by the Working Group on reservations to treaties earlier in the current session. The guidelines would be included in section F of chapter IV of the report with the amendments made during the adoption of the report. On that understanding, he would take it that the Commission wished to adopt document A/CN.4/L.783/Add.1.

It was so decided.

(a) *Introduction* (concluded) (A/CN.4/L.783/Add.8)

40. The CHAIRPERSON drew attention to document A/CN.4/L.783/Add.8, recalling that the adoption of paragraph (1) had been deferred pending the completion of work on the other parts of chapter IV. All those texts having now been adopted, he would take it that the Commission wished to adopt paragraph (1) of document A/CN.4/L.783/Add.8.

Paragraph (1) (concluded)

Paragraph (1) was adopted.

Section F of chapter IV, as amended, was adopted.

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

41. Mr. PELLET (Special Rapporteur) said that he wished to thank all members of the Commission for their spirit of cooperation. In particular, he thanked the members of the Working Group on reservations to treaties, who had helped him to complete his work on the Guide to Practice, and the Chairperson, for his able conduct of the proceedings. He also thanked his assistants and members of the Secretariat for their invaluable contributions.

The meeting rose at 12.55 p.m.

3126th MEETING

Thursday, 11 August 2011, at 3 p.m.

Chairperson: Mr. Maurice KAMTO

Present: Mr. Caffisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Expulsion of aliens (concluded)* (A/CN.4/638, sect. B, A/CN.4/642)

[Agenda item 5]

REPORT OF THE DRAFTING COMMITTEE

1. The CHAIRPERSON invited the Chairperson of the Drafting Committee to introduce the progress report of the Committee concerning the topic “Expulsion of aliens” before the Commission adopted chapter VIII of its draft report.

2. Mr. MELESCANU (Chairperson of the Drafting Committee) said that during the current session, the Drafting Committee had held 12 meetings, during which it

had considered six draft articles referred to it during the second part of the sixty-second session of the Commission following the debate on the Special Rapporteur’s sixth report,⁴⁵⁹ seven draft articles referred to it during the first part of the current session following the debate on the second addendum to the Special Rapporteur’s sixth report⁴⁶⁰ and a draft article on “Expulsion in connection with extradition”, as revised by the Special Rapporteur during the sixty-second session,⁴⁶¹ which had also been referred to the Drafting Committee at the current session. Moreover, the Special Rapporteur had submitted to the Drafting Committee, in the light of the plenary debate, a number of suggestions with a view to modifying the text of some of the draft articles referred to the Committee during the current session, and he had also proposed an additional draft article on the suspensive effect of an appeal against an expulsion decision. The Commission would recall that, at the current session, it had also referred to the Drafting Committee the restructured summary of the draft articles contained in the Special Rapporteur’s seventh report (A/CN.4/642).

3. The work undertaken by the Drafting Committee on those various draft articles had been very productive. The Drafting Committee had been able to provisionally adopt the following 15 draft articles: “Prohibition of disguised expulsion”, “Grounds for expulsion”, “Detention conditions of aliens subject to expulsion”, “Requirement for conformity with the law”, “Procedural rights of aliens facing expulsion” (which provided a single list of procedural rights applicable both to aliens lawfully present and to aliens unlawfully present in the territory of the expelling State), “Expulsion in connection with extradition”, “Return to the receiving State of the alien being expelled”, “State of destination of expelled aliens”, “Protecting the human rights of aliens subject to expulsion in the transit State”, “Protecting the property of aliens facing expulsion”, “Right of return to the expelling State”, “Responsibility of States in cases of unlawful expulsion”, “Diplomatic protection”, “Procedures for individual recourse” and “Suspensive effect of an appeal against an expulsion decision”.

4. The Drafting Committee had also considered the restructuring and renumbering of the draft articles on the basis of the general framework provided in the last chapter of the Special Rapporteur’s seventh report, which had been considered at the current session. However, due to lack of time, the Drafting Committee had not been able to make a final determination on certain issues that were still pending. He was confident, however, that the Drafting Committee would be in a position to complete the remaining work and finalize the text so that it could be submitted to the Commission for adoption on first reading at the 2012 session. An introduction of all the draft articles would be provided on that occasion.

⁴⁵⁹ *Yearbook ... 2010*, vol. II (Part One), document A/CN.4/625 and Add.1–2.

⁴⁶⁰ At its sixty-second session, the Commission began the consideration of chapters I to IV, section C, of the sixth report of the Special Rapporteur, and continued at the present session with chapters IV, section D, to VIII, contained in the second addendum to the sixth report (see the summary records of the 3091st to 3094th meetings above).

⁴⁶¹ *Yearbook ... 2010*, vol. II (Part Two), p. 165, para. 176.

* Resumed from the 3098th meeting.