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A/CN.4/3127

Summary record of the 3127th meeting

Topic:
<multiple topics>

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

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C. Protection of persons in the event of disasters

Paragraph 9

Paragraph 9 was adopted.

Paragraph 10

41. Mr. GAJA, referring to the first sentence, said it was preferable to say that “The Commission has taken the view” rather than “The Commission has affirmed”.

42. Mr. NOLTE said that the paragraph was unclear: it began by making a statement, and then posed a question concerning what had just been affirmed. The second sentence in the English text should start with the word “Does” rather than “Should”.

43. Mr. MELESCANU asked why there was a reference to “third States” in the second sentence, whereas the duty evoked in the first sentence concerned all States.

44. Mr. VASCIANNIE noted that the paragraph would thus be reformulated to read:

“The Commission has taken the view that States have a duty to cooperate with the affected State in disaster relief matters. Does this duty to cooperate include a duty on States to provide assistance when requested by the affected State?”

Paragraph 10, as amended, was adopted.

The meeting rose at 6 p.m.

3127th MEETING

Friday, 12 August 2011, at 10 a.m.

Chairperson: Mr. Maurice KAMTO

Present: Mr. Caflisch, Mr. Candioti, 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 (concluded)

CHAPTER III. *Specific issues on which comments would be of particular interest to the Commission (concluded)* (A/CN.4/L.782)

1. The CHAIRPERSON invited the Commission to continue its consideration of chapter III of its report, contained in document A/CN.4/L.782.

D. The obligation to extradite or prosecute (*aut dedere aut judicare*)

Paragraphs 11 to 13

2. Mr. McRAE said that paragraph 11 gave the impression that the Commission had engaged in a

fairly extensive discussion about the legal source of the obligation to extradite or prosecute. He did not recall that it had done so, however, and he did not think it should be saying to the Sixth Committee that it had.

3. Mr. PETRIČ said that the use of the word “question” in paragraph 11 seemed inappropriate because no question was being asked.

4. Sir Michael WOOD, supported by Mr. VASCIANNIE, said that paragraphs 11 to 13 did not actually raise questions, but instead provided unnecessary background information. The paragraphs should be deleted.

It was so decided.

Paragraph 14

5. Mr. McRAE said that it seemed a little odd to attempt to discover whether there was a basis in customary international law for an obligation to extradite or prosecute by conducting an opinion poll in the General Assembly: what was required was a detailed analysis of the literature and State practice. The Sixth Committee might well say that it was up to the Commission to decide whether there was a customary rule of international law. He wondered whether it was necessary to retain the paragraph.

6. Sir Michael WOOD said that he would prefer to see section D deleted, but if paragraph 14 was retained, a number of drafting changes should be made. The final phrase of the *chapeau*, “as to their views on these matters”, should be reworded to read: “as to their views on the following matters”. In the first bullet point, the opening words, “Is there a basis”, should be replaced with the words “Do they consider that there is a basis”, since the Commission would be seeking the views of States as to whether they thought there was a basis in customary international law for an obligation to extradite or prosecute. In the second bullet point, the words “If not” should be deleted, since there was a range of possible answers to the preceding question.

7. Mr. DUGARD said that he also supported the deletion of paragraph 14. The first bullet point did indeed suggest that an opinion poll should be taken in the Sixth Committee on the subject. Surely it was the task of the Commission to decide whether or not there was a basis in customary law for such an obligation. As to the second bullet point, he was not sure whether the Commission had ever asked whether it should engage in a particular exercise *de lege ferenda*. It was for the Commission to decide such an issue. The line between codification and progressive development was very thin and the Commission seldom engaged in a wholesale exercise *de lege ferenda*. It generally engaged in progressive development but within the parameters of codification. The only question the Commission could ask of the Sixth Committee was if States could provide evidence of their practice. The second bullet point should therefore be deleted.

8. Mr. MELESCANU said that he preferred to retain section D, since the Commission had addressed the topic of the obligation to extradite or prosecute and its omission from the report might be misinterpreted. He therefore

proposed that the section should contain just one paragraph based on Sir Michael's proposal indicating that, in order to orient its future work on the topic, the Commission would appreciate receiving from Governments information about their practice in the field, especially whether they considered that there was a basis in customary international law for an obligation to extradite or prosecute persons accused of the most serious international crimes.

9. Ms. JACOBSSON said that she agreed with Mr. Melescanu that it was important to keep section D. The section should also remind States of questions put to them during previous sessions and indicate that the Commission would welcome responses from States that had not yet replied. She agreed with colleagues that the Commission should be wary of asking States about whether the Commission should engage in progressive development or not. That was the Commission's prerogative.

10. Mr. SABOIA said that he supported the views of Ms. Jacobsson and Mr. Melescanu.

11. Mr. VASCIANNIE said that paragraph 14 should be retained in the form proposed by Sir Michael. The Commission had raised the question of *lex ferenda* in relation to a number of other subjects in other parts of its report, and the same yardstick should be applied to *aut dedere aut judicare* as to other topics.

12. Mr. PELLET said that it seemed hard to argue that, because the Commission had prerogatives, it could not seek the views of States. As the question of State practice was of real interest to the Commission, the questions to Governments should be, first, whether in their legislation and case law there were crimes or categories of crimes in respect of which the obligation to extradite or prosecute had been implemented, and, secondly, if so, whether any tribunal or court had ever relied in that respect on customary international law.

13. The CHAIRPERSON said that he took it that the Commission wished to adopt paragraph 14 along the lines proposed by Mr. Pellet.

Paragraph 14, as amended, was adopted.

E. Treaties over time

Paragraphs 15 and 16

14. Sir Michael WOOD suggested that, for the sake of clarity and readability, paragraphs 15 and 16 be merged.

Paragraphs 15 and 16 were merged and adopted.

F. The most-favoured-nation clause

Paragraph 17

Paragraph 17 was adopted.

G. New topics

Paragraphs 18 and 19

Paragraphs 18 and 19 were adopted.

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

CHAPTER XI. Treaties over time (concluded) (A/CN.4/L.790 and Add.1)

15. The CHAIRPERSON invited the Commission to resume its consideration of chapter XI of its draft report, with particular reference to the preliminary conclusions by the Chairperson of the Study Group, contained in addendum A/CN.4/L.790/Add.1.

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

3. PRELIMINARY CONCLUSIONS BY THE CHAIRPERSON OF THE STUDY GROUP, REFORMULATED IN LIGHT OF THE DISCUSSIONS IN THE STUDY GROUP

Conclusions 1 to 7

Conclusions 1 to 7 were adopted.

Conclusion 8

16. Ms. ESCOBAR HERNÁNDEZ said that, in the second paragraph, the phrase "Elements of crime" [*Elementos del crimen*] should be replaced with "Elements of crimes" [*Elementos de los crímenes*].

Conclusion 8, as amended, was adopted.

Conclusion 9

Conclusion 9 was adopted.

The nine preliminary conclusions by the Chairperson of the Study Group reformulated in light of the discussions in the Study Group, as a whole, as amended, were adopted.

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

CHAPTER I. Organization of the work of the session (A/CN.4/L.780)

17. The CHAIRPERSON invited the Commission to begin its consideration of chapter I of its draft report.

Paragraph 1

18. Mr. McRAE pointed out that Mr. Wisnumurti had opened the current session, not Mr. Petrič.

Paragraph 1 was adopted, with that correction.

A. Membership

Paragraph 2

Paragraph 2 was adopted.

B. Casual vacancies

Paragraph 3

Paragraph 3 was adopted.

C. Officers and the Enlarged Bureau

Paragraphs 4 to 6

Paragraphs 4 to 6 were adopted.

D. Drafting Committee

Paragraph 7

Paragraph 7 was adopted.

Paragraph 8

*Paragraph 8 was adopted, subject to the addition by the secretariat of certain factual elements.***E. Working Groups and Study Groups**

Paragraphs 9 and 10

*Paragraphs 9 and 10 were adopted.***F. Secretariat**

Paragraph 11

*Paragraph 11 was adopted.***G. Agenda**

Paragraph 12

*Paragraph 12 was adopted.**Chapter I of the report of the Commission, as a whole, as amended, was adopted.***CHAPTER XIII. Other decisions and conclusions of the Commission (A/CN.4/L.792)**

19. The CHAIRPERSON invited the Commission to begin its consideration of chapter XIII of the draft report and drew attention to the portion of the chapter contained in document A/CN.4/L.792.

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

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

1. WORKING GROUP ON THE LONG-TERM PROGRAMME OF WORK

Paragraphs 3 to 7

Paragraphs 3 to 7 were adopted.

2. METHODS OF WORK OF THE COMMISSION

Paragraphs 8 and 9

Paragraphs 8 and 9 were adopted.

(a) Role of the Special Rapporteurs

Paragraph 10

Paragraph 10 was adopted.

(b) Study Groups

Paragraph 11

Paragraph 11 was adopted.

(c) Drafting Committee

Paragraphs 12 to 15

Paragraphs 12 to 15 were adopted.

(d) Planning Group

Paragraph 16

Paragraph 16 was adopted.

(e) Preparation of commentaries to draft articles

Paragraphs 17 to 20

Paragraphs 17 to 20 were adopted.

(f) Final form

Paragraph 21

Paragraph 21 was adopted.

(g) The report of the International Law Commission

Paragraphs 22 and 23

Paragraphs 22 and 23 were adopted.

(h) Length and nature of future sessions

Paragraphs 24 to 26

Paragraphs 24 to 26 were adopted.

(i) Relationship with the Sixth Committee

Paragraphs 27 to 29

Paragraphs 27 to 29 were adopted.

3. CONSIDERATION OF GENERAL ASSEMBLY RESOLUTION 65/32 OF 6 DECEMBER 2010 ON THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS

Paragraphs 30 to 32

Paragraphs 30 to 32 were adopted.

Paragraph 33

20. Mr. NOLTE said that the quotation of the President of the International Court of Justice should be preceded by a phrase showing that the Commission endorsed the President's views. He therefore proposed inserting the word "convincingly" between the words "has" and "emphasized" in the first sentence.

Paragraph 33, as amended, was adopted.

Paragraphs 34 to 36

Paragraphs 34 to 36 were adopted.

4. HONORARIA

Paragraph 37

Paragraph 37 was adopted.

5. ASSISTANCE TO SPECIAL RAPPORTEURS

Paragraph 38

Paragraph 38 was adopted.

6. ATTENDANCE OF THE GENERAL ASSEMBLY BY SPECIAL RAPPOREURS DURING THE CONSIDERATION OF THE COMMISSION'S REPORT

Paragraph 39

Paragraph 39 was adopted.

7. DOCUMENTATION AND PUBLICATIONS

(a) *Processing and issuance of reports of Special Rapporteurs*

Paragraph 40

Paragraph 40 was adopted.

(b) *Summary records of the work of the Commission and the posting on the website*

Paragraphs 41 to 43

Paragraphs 41 to 43 were adopted.

(c) *Yearbook of the International Law Commission*

Paragraphs 44 to 47

Paragraphs 44 to 47 were adopted.

(d) *Trust fund on the backlog relating to the Yearbook of the International Law Commission*

Paragraph 48

Paragraph 48 was adopted.

(e) *Assistance of the Codification Division*

Paragraph 49

Paragraph 49 was adopted.

(f) *Websites*

Paragraph 50

Paragraph 50 was adopted.

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

Paragraphs 51 to 53

Paragraphs 51 to 53 were adopted.

C. Peaceful settlement of disputes

Paragraphs 54 and 55

Paragraphs 54 and 55 were adopted.

D. Cooperation with other bodies

Paragraphs 56 to 58

Paragraphs 56 to 58 were adopted.

Paragraph 59

21. Mr. McRAE said that the consideration by AALCO of the work of the Commission was worthy of mention. He consequently proposed that the words "In particular, he reviewed the consideration given by AALCO to the work of the Commission" should be inserted as the penultimate sentence.

Paragraph 59, as amended, was adopted.

Paragraph 60

Paragraph 60 was adopted.

E. Representation at the sixty-sixth session of the General Assembly

Paragraph 61

Paragraph 61 was adopted.

Paragraph 62

22. The CHAIRPERSON said that he had been informed by the secretariat that, owing to budgetary constraints, it would not be possible to designate one or more Special Rapporteurs of the International Law Commission to attend the sixty-sixth session of the General Assembly.

23. Mr. PELLET said that the wording of paragraph 62 had been a standard text in the Commission's report for years. He proposed that the Commission should express in that paragraph its regret that no Special Rapporteur was to be requested to attend the upcoming session of the General Assembly.

With that amendment, paragraph 62 was adopted.

F. Gilberto Amado Memorial Lecture

Paragraph 63

Paragraph 63 was adopted.

G. International Law Seminar

Paragraph 64

Paragraph 64 was adopted.

Paragraph 65

24. Mr. HMOUD proposed that, in the first sentence, the phrase "from all geographic regions of the world", be deleted, as there had been no participant from the Arab region in the International Law Seminar in 2011. A number of colleagues joined with him in expressing regret at the unprecedented lack of participants from the Arab region, which had a long-established legal system.

Paragraph 65, as amended, was adopted.

Paragraphs 66 to 69

Paragraphs 66 to 69 were adopted.

Paragraph 70

25. Mr. McRAE said that the reference to the memorial seminar organized in honour of Ms. Paula Escarameia deserved to be treated in its own right, in a separate section to be placed before section G. The new section should include the information that the seminar had been organized by Ms. Jacobsson in conjunction with the Graduate Institute of International and Development Studies of Geneva, and paragraph 70 should be amended so as to simply refer to the new section on the memorial seminar. He proposed to work with the secretariat on drafting the new and amended texts.

On that understanding, paragraph 70 was adopted.

Paragraphs 71 to 75

Paragraphs 71 to 75 were adopted.

Paragraph 76

26. Mr. HMOUD proposed that after the words “especially from developing countries”, the phrase “and from all geographic regions and legal traditions” should be inserted.

Paragraph 76, as amended, was adopted.

Paragraph 77

Paragraph 77 was adopted.

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

The report of the International Law Commission, as a whole, as amended, was adopted.

Chairperson’s concluding remarks

27. The CHAIRPERSON thanked all the members of the Commission for their contributions to the work of the sixty-third session. To those members who were leaving—some after decades—he wished to convey the Commission’s profound gratitude and appreciation for the excellence and dedication with which they had served to advance the codification and progressive development of international law. He was also grateful for the competent and continuous assistance provided by the secretariat. He thanked all the interpreters, précis-writers, conference officers and other members of conference services for their cooperation and assistance.

Closure of the session

28. After the customary exchange of courtesies, the CHAIRPERSON declared the sixty-third session of the International Law Commission closed.

The meeting rose at 11.25 a.m.
