

Document:-
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Summary record of the 3130th meeting

Topic:
Organization of the work of the session

Extract from the Yearbook of the International Law Commission:-
2012, vol. I

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

report. Some of their statements largely reflected views that had already elicited a sometimes intense debate within the Commission and to which the Commission had attempted to respond, both in plenary meetings and in the Drafting Committee. Obviously, not all problems had been resolved, and consideration of the set of draft articles would thus continue with the Drafting Committee, taking into account new contributions made at the current session.

61. With regard to a number of points, responses had, for the most part, been provided or suggested in the eighth report. That had been the case, for example, with the issue of expulsion as it related to extradition. In the light of the discussions held in the Sixth Committee, the Special Rapporteur had thought it advisable to address the concern raised by States by proposing a “without prejudice” clause in paragraph 25 of his report, although it had not been his preferred choice. That solution, if adopted by the Drafting Committee, could provide an acceptable response and allay States’ fears in that regard. The Special Rapporteur had also taken into account the question of the right to return and had followed the proposals made by States on that point.

62. The question of the multiplicity of regimes brought him back to an issue that never ceased to amaze him: the endless debate on the question of whether the topic lent itself to codification. In fact, expulsion of aliens was the topic that had supplied the most abundant practice since the nineteenth century (with the possible exception of State responsibility for internationally wrongful acts and, to a certain extent, diplomatic immunity). If that subject did not lend itself to codification, then he wondered what the Commission was doing and why it codified certain topics that lacked a basis in customary law and that were based on very limited practice. The Commission had recognized that the topic might give rise to draft articles and those articles had been submitted to the General Assembly, which had taken note of them.

63. The Commission could, of course, limit itself to what was known as codification “on the basis of established law”—in other words, consisting solely of a compilation of provisions that already existed in various conventions. That was not the task assigned to the Commission, whose mission, according to its statute, was the progressive development of international law and its codification. In fact, it seemed to him that, to date, the Commission had done very little progressive development on the topic of expulsion of aliens, which was generally based on State practice and international case law.

64. Without wishing to pre-empt the Commission’s eventual decision, he urged the Commission once again, as he had done from the outset, to submit the outcome of its work to the General Assembly in the form of draft articles. Whatever follow-up the General Assembly might wish to give to those draft articles—whether the elaboration of a draft convention or the convening of a diplomatic conference—fell outside the scope of the Commission’s competence.

65. Mr. HMOUD (Chairperson of the Drafting Committee) announced that the Drafting Committee on the topic of

expulsion of aliens would be composed of Mr. Comissário Afonso, Ms. Escobar Hernández, Mr. Forteau, Mr. Gómez Robledo, Mr. Kittichaisaree, Mr. Murphy, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Tladi, Mr. Valencia-Ospina, Mr. Wisnumurti and Sir Michael Wood, together with Mr. Kamto (Special Rapporteur) and Mr. Šturma (*ex officio*).

The meeting rose at 1 p.m.

3130th MEETING

Friday, 11 May 2012, at 10.05 a.m.

Chairperson: Mr. Lucius CAFLISCH

Present: Mr. Al-Marri, Mr. Candiotti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Gevorgian, Mr. Gómez Robledo, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. McRae, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Organization of the work of the session (*continued*)^{*}

[Agenda item 1]

1. The CHAIRPERSON said that he had not yet completed his informal consultations regarding the manner in which topics on the Commission’s agenda or new subjects should be approached. He hoped that he would be able to provide more information at the plenary meeting on Wednesday, 16 May.

2. Ms. JACOBSSON thanked the Chairperson for consulting his colleagues with regard to the work of the current session and suggested that, as the Planning Group was supposed to advise the Commission about the organization of its work, it might be wise to hold a meeting of the Group in May, in keeping with previous practice. A meeting early in the session would also be beneficial for the new members of the Commission.

3. The CHAIRPERSON said that the Bureau had already considered that matter and was in favour of holding a meeting of the Planning Group as soon as he had completed his informal consultations.

4. Mr. CANDIOTTI said that he supported the idea of holding a meeting of the Planning Group as soon as was appropriate. The Group should consider the Commission’s functioning and work for the entire quinquennium and should be prepared to answer any questions that new members might have in that connection.

* Resumed from the 3128th meeting.

5. Sir Michael WOOD, endorsing the statements of Ms. Jacobsson and Mr. Candioti, said that it would be wise to hold a meeting of the Planning Group the following week. It was important that all members should be aware of the procedure that special rapporteurs had to follow and it was also vital to plan the work for the quinquennium, as the Commission had made clear in paragraph 378 of its report to the General Assembly on the work of the Commission's sixty-third session (A/66/10).³⁶ Members might wish to refresh their memories as to what had been agreed in that respect in 2011.

6. Mr. GÓMEZ ROBLEDO said he believed that, as a new member of the Commission, he would benefit greatly from a meeting of the Planning Group at the earliest opportunity.

7. The CHAIRPERSON suggested that the Planning Group should meet on Friday, 18 May.

It was so decided.

The meeting rose at 10.15 a.m.

3131st MEETING

Friday, 18 May 2012, at 10 a.m.

Chairperson: Mr. Lucius CAFLISCH

Present: Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

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

[Agenda item 1]

The CHAIRPERSON announced that the Bureau had adopted the programme of work for the following week, copies of which had just been distributed to members.

The meeting rose at 10.05 a.m.

3132nd MEETING

Tuesday, 22 May 2012, at 10.05 a.m.

Chairperson: Mr. Lucius CAFLISCH

Present: Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau,

Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. McRae, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood.

Statement by the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel

1. The CHAIRPERSON welcomed Ms. Patricia O'Brien, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, and invited her to brief the Commission on the latest legal developments in the United Nations. He also welcomed Mr. Hans Corell, former Legal Counsel, who had come to observe the proceedings.

2. Ms. O'BRIEN (Under-Secretary-General for Legal Affairs and United Nations Legal Counsel), after congratulating the new members of the Commission on their election, said that there had been a number of significant developments in the Sixth Committee during the sixty-sixth session of the General Assembly. In its resolution 66/98 of 9 December 2011, entitled "Report of the International Law Commission on the work of its sixty-third session", the Assembly had provided policy guidance for the Commission's work. The Sixth Committee continued to look to the Commission for its valuable contribution towards the progressive development and codification of international law.

3. At its sixty-third session, the Commission had completed its work on the draft articles on the responsibility of international organizations³⁷ and on the effects of armed conflicts on treaties³⁸ and commentaries thereto; the General Assembly had therefore taken note of both sets of articles, annexed them to resolutions³⁹ and commended them to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action. It had also decided to revert to those items at its sixty-ninth session with a view to examining, *inter alia*, the question of the form that might be given to the articles.

4. Regarding the Commission's work on the topic "Reservations to treaties", which had included the adoption of draft guidelines and commentaries thereto in the Guide to Practice on Reservations to Treaties,⁴⁰ she recalled that the Assembly had decided that, in order to have a fuller debate, consideration of the topic should be resumed at its sixty-seventh session,⁴¹ once all the relevant documentation had become available.

5. As for the other topics currently on the Commission's programme of work, the Assembly had recommended in

³⁷ Yearbook ... 2011, vol. II (Part Two), paras. 87–88.

³⁸ Ibid., paras. 100–101.

³⁹ General Assembly resolutions 66/100 and 66/99 of 9 December 2011, respectively.

⁴⁰ Yearbook ... 2011, vol. II (Part Three) and vol. II (Part Two), para. 75.

⁴¹ General Assembly resolution 66/98, para. 5.

³⁶ Yearbook ... 2011, vol. II (Part Two), pp. 176–177.