

Document:-  
**A/CN.4/SR.2680**

**Summary record of the 2680th meeting**

Topic:  
**Diplomatic protection**

Extract from the Yearbook of the International Law Commission:-  
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their use by States to get around the strict restrictions on late reservations must not be allowed.

73. Mr. Rosenstock was surely doing himself an injustice by claiming not to comprehend the distinction between reservations and conditional interpretative declarations. The two types of unilateral statements served different purposes, and that difference had already been incorporated in the definitions in chapter 1 of the Guide to Practice. On the other hand, his failure to grasp the difference between the relevant legal regimes was understandable. The more he himself delved into the topic, the more strongly he became convinced that the legal regime for conditional interpretative declarations was probably identical, with one or two small exceptions, to that of reservations. Nevertheless, he proposed to stick to the empirical approach used so far, namely to continue to study reservations and interpretative declarations and to try to uncover State practice, and if at the end of the day there seemed to be no need for separate provisions on conditional interpretative declarations, then they could be removed from the Guide.

74. Mr. Economides had raised a very valid point concerning guideline 2.2.2. One could not really say that "reservations" were made at the time of negotiation of a treaty, but there must be a draft guideline to cover the situation. If statements made at that time were not reservations, then they were at least expressions of intent to make a reservation: Sir Humphrey Waldock had spoken of embryonic reservations.<sup>8</sup> The Drafting Committee could certainly recast guideline 2.2.2 to speak of intentions to formulate reservations.

75. Mr. Lukashuk's doubts about the verbs used in connection with reservations were groundless: they were formulated, not made. He understood some members' doubts about guideline 2.2.4 but believed that the phenomenon it addressed should be drawn to the attention of States. The Drafting Committee should consider the matter further. Mr. Lukashuk and many others had said a distinction must be made between open and closed treaties, but he himself had wondered how. Then he had had an idea, while listening to Mr. Kamto and Mr. Melescanu. The requirement of active unanimity was perhaps too rigorous in general terms, but for truly closed treaties, those that were reserved for a limited number of participants, it might be retained.

76. Lastly, he thanked the members of the Commission who had spoken on the topic and expressed the firm conviction that the Drafting Committee would be able to make substantial improvements on the draft guidelines.

*The meeting rose at 1.05 p.m.*

<sup>8</sup> See paragraph (16) of the commentary to article 18 of the draft articles on the law of treaties (*Yearbook . . . 1962*, vol. II, p. 180, document A/5209).

## 2680th MEETING

*Friday, 25 May, 2001 at 10.05 a.m.*

*Chairman:* Mr. Peter KABATSI

*Present:* Mr. Addo, Mr. Al-Baharna, Mr. Baena Soares, Mr. Candioti, Mr. Dugard, Mr. Economides, Mr. Galicki, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Tomka, Mr. Yamada.

### **Diplomatic protection<sup>1</sup> (A/CN.4/506 and Add.1,<sup>2</sup> A/CN.4/513, sect. B, A/CN.4/514<sup>3</sup>)**

[Agenda item 3]

#### FIRST AND SECOND REPORTS OF THE SPECIAL RAPPORTEUR

1. Mr. DUGARD (Special Rapporteur) said that, at its fifty-second session, the Commission had considered chapters I (Structure of the report) and II (Draft articles) of his first report on the topic (A/CN.4/506 and Add.1), which contained articles 1 to 8, but had been unable to consider chapter III (Continuous nationality and the transferability of claims) containing article 9. His introduction would thus deal only with that subject, although it was to be hoped that the Commission would find time, during the second part of the session, to consider his second report (A/CN.4/514), which focused largely on the subject of the exhaustion of local remedies.

2. The law of diplomatic protection was an area in which there was a substantial body of State practice, jurisprudence and doctrine and was thus a field one might suppose to be relatively non-controversial and to have produced many widely accepted rules of customary law, so that his task would simply be to choose and formulate those rules that were backed by considerable authority. Unfortunately, that was not the case, as the abundant sources of that law all seemed to point in different directions. In respect of diplomatic protection, the Commission was in the same position as a judge, who was asked not to formulate new rules, but to choose among them, discarding those that had little support in State practice, jurisprudence and doctrine and, where there were competing or conflicting options each backed by authority,

<sup>1</sup> For the text of draft articles 1 to 9 proposed by the Special Rapporteur in his first report, see *Yearbook . . . 2000*, vol. I, 2617th meeting, para. 1.

<sup>2</sup> See *Yearbook . . . 2000*, vol. II (Part One).

<sup>3</sup> Reproduced in *Yearbook . . . 2001*, vol. II (Part One).

choosing those that seemed most in accordance with the principle of justice in the particular circumstances. Both at the fifty-second session of the Commission and in the Sixth Committee, his first report had been subjected to some criticism for seeking to inject a human rights dimension into diplomatic protection (see A/CN.4/513, paras. 194 and 195). He had probably erred in expounding a human rights philosophy in chapter I of his report; yet it could not be denied that, unlike most other branches of international law, diplomatic protection was concerned not only with State rights, in accordance with the Vattelian fiction that an injury to a national was an injury to the State,<sup>4</sup> but also with ordinary men, women and children who had been denied justice or injured in some other way by the authorities of a State of which they were not nationals.

3. The question of continuous nationality (art. 9) was a good illustration of those general problems of the law of diplomatic protection. There was a traditional view and aspirant rule on the question, according to which a State could exercise diplomatic protection only on behalf of a person who had been a national of that State at the time of the injury on which the claim was based and who had continued to be a national up to and including the time of the presentation of the claim. That traditional view was supported by some State practice and was to be found in many agreements, including the Algiers Declarations (two declarations by the Government of the Democratic and Popular Republic of Algeria concerning the settlement of claims by the Government of the United States and the Government of the Islamic Republic of Iran)<sup>5</sup> and in the United States and United Kingdom declared practice rules. It was also supported by codification proposals, including those undertaken by the American Institute of International Law in 1925 in Project No. 16 concerning “Diplomatic Protection”;<sup>6</sup> by the authors of the Draft Convention on Responsibility of States for Damage Done in Their Territory to the Person or Property of Foreigners, prepared by Harvard Law School in 1929;<sup>7</sup> by F. V. García Amador, Special Rapporteur of the Commission, in his third report on international responsibility;<sup>8</sup> and by the Institute of International Law, albeit with important qualifications, in its resolution on “The national character of an international claim presented by a State for injury suffered by an individual” adopted at its Warsaw session, in 1965.<sup>9</sup> It was also supported by some arbitral decisions, including those in the *Stevenson* and *Kren* cases, as well as by the Iran-United States Claims Tribunal in the application of the Algiers Declaration governing the Tribunal. Lastly, it was supported in doctrine, having

been enthusiastically supported by Oppenheim<sup>10</sup> and Borchard.<sup>11</sup> In addition to that support in legal theory and practice, the rationale for the traditional view was that it was designed to prevent the abuses against which Moore<sup>12</sup> and Parker<sup>13</sup> had warned in 1906 and 1924, respectively, by preventing individuals from embarking on a search for the most powerful and “effective” State, the one which would thus offer the most advantageous protection, and by preventing powerful States from being converted into “claims agencies”.

4. However, that traditional, well-supported and rational point of view was challenged by another view, also authoritative and based on equally well-supported and rational critical arguments. In the first place, it was difficult to reconcile with the Vattelian principle: if the injury to the national was an injury to the State, any subsequent change in nationality on the part of the individual once the injury had been inflicted would be completely irrelevant. Secondly, judicial pronouncements questioned the validity of the principle. For instance, in *Administrative Decision No. V*, Umpire Parker noted that some tribunals had declined to follow the traditional rule and that others, while following it, had challenged its soundness. In the *Panevezys-Saldutiskis Railway* case, Judge van Eysinga had stated in his dissenting opinion that the practice of continuity had not crystallized into a general rule.

5. Thirdly, the content of the traditional aspirant rule was uncertain because there was no clarity regarding the meaning of the key terms used in its formulation. Did the term “date of injury” mean the date of the actual injury, the date on which justice had been denied or the date on which the respondent State had failed to pay compensation? The notion of continuity was equally deceptive, with codification proposals mentioning only the date of the injury and the date of the presentation of the claim. Was the intervening period completely irrelevant? Was the date until which nationality must have continued (the *dies ad quem*) the date on which the Government endorsed the claim of its national, the date of the initiation of the diplomatic negotiations, the date of the filing of the claim, the date of the entry into force of the treaty of arbitration, the date of the presentation of the claim or the date of the judgement? Those uncertainties were easily explained by the fact that each case was controlled by the language of the particular treaty concluded to regulate it. Fourthly, the rationale for the traditional rule was no longer valid: in the first place, States, particularly the major Powers that would be most effective in presenting such a claim, were very cautious at the current time about conferring nationality; next, since the *Nottebohm* case, it was established that a claimant State must also be able to demonstrate an effective link with the national on whose behalf it submitted a claim. It was thus no longer in an individual’s interest to “shop around” for the most

<sup>4</sup> E. de Vattel, *Le droit des gens, ou Principes de la loi naturelle (The Law of Nations or the Principles of Natural Law)*, English translation of the edition of 1758 in *The Classics of International Law*, vol. III (Washington, D.C., Carnegie Institution of Washington, 1916), p. 136.

<sup>5</sup> See ILM, vol. 20, No. 1 (January 1981), p. 223.

<sup>6</sup> Reproduced in *Yearbook . . . 1956*, vol. II, p. 227, document A/CN.4/96, annex 7.

<sup>7</sup> *Ibid.*, p. 229, annex 9.

<sup>8</sup> *Yearbook . . . 1958*, vol. II, p. 47, document A/CN.4/111, in particular, p. 61, art. 21.

<sup>9</sup> Institut de droit international, *Tableau des résolutions adoptées (1957-1991)* (Paris, Pedone, 1992), p. 59.

<sup>10</sup> R. Y. Jennings and A. D. Watts, eds., *Oppenheim’s International Law*, 9th ed., vol. I, *Peace* (London, Longman, 1992), p. 512.

<sup>11</sup> E. M. Borchard, “The protection of citizens abroad and change of original nationality”, *Yale Law Journal*, vol. 43, No. 3 (January 1934), pp. 377–380.

<sup>12</sup> J. B. Moore, *A Digest of International Law* (Washington, D.C., 1906), vol. VI, p. 637.

<sup>13</sup> *Administrative Decision No. V*, p. 141.

advantageous State. Fifthly, the traditional rule was unjust in that it could lead to the denial of diplomatic protection to individuals who had changed nationality involuntarily, whether as a result of succession of States—an exception recognized by the Institute of International Law in its formulation of the rule in 1965—or for other reasons, such as marriage or adoption. Sixthly, the rule failed to acknowledge that the individual was the ultimate beneficiary of diplomatic protection. Politis had successfully challenged Rapporteur Borchard's proposal to give approval to the continuity rule, arguing that protection ought to be exercised in favour of the individual, without regard to change of nationality, except in those cases in which that individual made a claim against the Government of his origin or decided to acquire a new nationality only for a fraudulent purpose.<sup>14</sup> The rule was thus subject to two exceptions. Seventhly and lastly, the traditional rule had been, and continued to be, criticized by writers, among them Geck,<sup>15</sup> Jennings,<sup>16</sup> O'Connell<sup>17</sup> and especially Wyler.<sup>18</sup>

6. In the light of that criticism and of the serious doubts cast on the status of the continuity rule as a customary rule, it would seem wise for the Commission to reconsider that traditional view and to adopt a more flexible rule, giving greater recognition to the idea of the individual as the ultimate beneficiary of diplomatic protection. That suggestion had been endorsed by the Draft Convention on the International Responsibility of States for Injuries to Aliens, by Harvard Law School<sup>19</sup> and taken up again by Orrego Vicuña in his report to ILA,<sup>20</sup> which reformulated the two exceptions singled out by Politis. The Commission had considered that matter briefly at its forty-seventh session, during consideration of the topic of State succession and its impact on the nationality of natural and legal persons. In his first report on the topic, the Special Rapporteur had pointed out that neither practice nor doctrine gave a clear answer to the question whether the continuous nationality rule applied to involuntary changes of nationality brought about by State succession.<sup>21</sup> Relying on the *Pablo Nájera* case, in which a distinction had been drawn between involuntary and voluntary change of nationality, he had stated that a more flexible solution was required in cases of involuntary change resulting from State succession. Also at the

forty-seventh session, the Working Group on State succession and its impact on the nationality of natural and legal persons had expressed the view that the continuity rule should not apply where change of nationality resulted from State succession, as the purpose of that rule, namely, to prevent the abuse of diplomatic protection, did not apply in the case of State succession.<sup>22</sup>

7. Article 9 took as its starting point the principle that the alleged "rule" of continuous nationality had outlived its usefulness. Essentially, it belonged to the pre-Nottebohm era, when individuals might relatively easily acquire a new nationality, without the need to demonstrate any effective and genuine link between the claimant State and its national. It might have been possible to retain the rule with an exception made in the case of involuntary change of nationality, but that would, in his view, be too restrictive an approach. In article 9, he therefore proposed a rule that abandoned the traditional continuity rule completely, but at the same time retained the safeguards against abuse of nationality that constituted its rationale. Article 9 allowed a State to bring a claim on behalf of a person who had acquired its nationality in good faith after the date of the injury attributable to a State other than the previous State of nationality, provided that the original State had not exercised or was not exercising diplomatic protection in respect of that injury. The safeguards consisted of the priority given to the original State of nationality, in accordance with the Vattelian fiction; the requirements that nationality must have been acquired in good faith and that there must be an effective link between the claimant State and its national, in accordance with the Nottebohm principle; and the fact that a claim could not be brought against the previous State of nationality for an injury that had occurred while the individual had been a national of that State—a safeguard that avoided the difficulties raised by such justly criticized laws as the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Helms-Burton Act),<sup>23</sup> which allowed Cubans who had become naturalized United States citizens to bring proceedings against the Cuban Government for losses incurred at the hands of that Government while they had still been nationals of Cuba. Paragraph 2 of article 9 also extended that principle to the transfer of claims. Article 9 thus offered a more flexible approach, and one more open to the idea that it was ultimately individuals that were the beneficiaries of diplomatic protection. That being so, the Special Rapporteur left it to the Commission to indicate which choices it wished to make in those circumstances.

8. Mr. YAMADA expressed his sincere admiration to the Special Rapporteur for his report, which was thought-provoking and illustrated his concern for the protection and promotion of human rights.

9. Diplomatic protection was an institution of State-to-State affairs under which a State could claim remedies from another State on behalf of its nationals for an injury individually suffered as a result of an internationally wrongful act attributable to that State. In exercising that right, the first State must fully take into consideration the

<sup>14</sup> *Annuaire de l'Institut de droit international*, Oslo session (1932), pp. 487–488.

<sup>15</sup> W. K. Geck, "Diplomatic Protection", in R. Benhardt (ed.), *Encyclopedia of Public International Law*, vol. I (1992), p. 1045, at p. 1055.

<sup>16</sup> R. Y. Jennings, "General course on principles of international law", *Recueil des cours de l'Académie de droit international de La Haye, 1967-II* (Leiden, Sijthoff, 1969), vol. 121, pp. 476–477.

<sup>17</sup> D. P. O'Connell, *International Law*, 2nd ed., vol. Two (London, Stevens and Sons, 1970), p. 1037.

<sup>18</sup> E. Wyler, *La règle dite de la continuité de la nationalité dans le contentieux international* (Paris, Presses Universitaires de France, 1990), p. 264.

<sup>19</sup> Reprinted in L. B. Sohn and R. R. Baxter, "Responsibility of States for injuries to the economic interests of aliens", *American Journal of International Law* (Washington, D.C.), vol. 55 (July 1961), p. 548.

<sup>20</sup> F. Orrego Vicuña, "The changing law of nationality of claims", final report submitted to the ILA Committee on Diplomatic Protection, 1999 (unpublished).

<sup>21</sup> See *Yearbook . . . 1995*, vol. II (Part One), document A/CN.4/467, para. 113.

<sup>22</sup> *Ibid.*, vol. II (Part Two), annex, paras. 31–32.

<sup>23</sup> See ILM, vol. 35, No. 2 (March 1996), p. 359.

human rights of the injured person, but diplomatic protection was not a human rights institution per se. The best way of protecting human rights and helping an individual to gain remedies for injury suffered by a wrongful act of a State was to give the individual the right to bring suit against a State, even the State of its nationality, in an international judicial body. Thousands of such cases reached the European Court of Human Rights. The codification of restrictive rules of jurisdictional immunity also contributed to the promotion of human rights. On the other hand, very few cases of diplomatic protection could be expected to end up in international judicial bodies.

10. Article 9 presented a very interesting aspect of diplomatic protection and deserved full consideration. The Special Rapporteur concluded in his report that the traditional “rule” of continuous nationality had outlived its usefulness and had no place in a world in which individual rights were recognized by international law and in which nationality was not easily changed. He respected that conclusion as a policy statement, but found it to be too broad as a reflection of current customary law. He believed that prevailing practice in the field of diplomatic protection was still based on the principle of continuous nationality and that, while nationality was not easily changed in individual cases, far more nationality changes occurred at the current time than in the past. He agreed with the Special Rapporteur, however, that it was necessary to deviate from the principle of continuity in order to resolve certain cases. The question was which were the appropriate cases.

11. Article 9, paragraph 1, referred to a *bona fide* change of nationality and that presented problems, as it had in article 5, on naturalization, which had been submitted to the Commission, but which the Special Rapporteur had been asked to redraft. The Commission could consider article 9, paragraph 1, in conjunction with new article 5. As the Special Rapporteur had pointed out, a change of nationality as a result of succession of States qualified as an appropriate case for deviating from the principle of continuous nationality, but *bona fide* naturalization was a problem and must be considered separately from change of nationality as a result of State succession. In his report, the Special Rapporteur acknowledged that although the doctrine of continuous nationality created particular hardships in the case of involuntary change of nationality, as in the case of State succession, it would be wrong to reject it in that case only, and that marriage, for instance, could involve a change of nationality that was involuntary. He himself thought that it was not the denial of diplomatic protection, but rather an involuntary change of nationality as a result of marriage, that was a violation of human rights.

12. Article 9, paragraph 2, referred to *bona fide* transfer of claims. A distinction must be made between a transfer of claims between legal persons and a transfer of claims between natural persons. At the fifty-second session of the Commission, the informal consultations on articles 1, 3 and 6 had agreed that “the draft articles would—at this stage—endeavour to cover the protection of both natural and legal persons”, had acknowledged that “The protection of legal persons does, however, raise special problems” and that “the Commission might at a later stage

wish to reconsider the question whether to include the protection of legal persons”.<sup>24</sup> He thought that the time had come to reconsider that question and that diplomatic protection should also cover legal persons, since mergers or buy-outs by companies often raised the issue of the *bona fide* transfer of claims between legal persons. The issue was a difficult one, but it was necessary to avoid protection shopping.

13. Having made those preliminary observations, he reserved the right to speak on the topic at a later stage in plenary.

14. Mr. KUSUMA-ATMADJA pointed out that the question of continuous nationality was fraught with difficulty. The topic should cover natural persons, giving them the right of option, and should exclude legal persons. He referred in that connection to a statement he had made during the consideration by the Commission at its forty-seventh session of the topic of “State succession and its impact on the nationality of natural and legal persons”, the title of which had been changed to “Nationality in relation to the succession of States”, in which he described the measures relating to nationality taken by the Government of Indonesia in which the interests of the persons concerned had been respected.<sup>25</sup>

15. He reserved the right to speak again on that very important matter at a later stage.

16. Mr. KATEKA congratulated the Special Rapporteur on his powerful arguments and his careful drafting of article 9 in such a way as to avoid protection shopping.

17. In his view, there were very few cases of the violation of diplomatic protection that would be dealt with at the international level: most would be handled at the national level. The proposed distinction between cases of involuntary and voluntary change of nationality was very likely to create more problems than it solved. The same was true for the extension of the scope of the topic to legal persons, which had been discussed at the fifty-second session of the Commission, and of which he was not in favour.

18. He agreed with the Special Rapporteur that the topic became more complex the more one worked on it and he wondered whether, before going any further, it would not be advisable to demarcate the scope of the topic by carefully indicating the elements of progressive development that would be incorporated, with particular regard for the protection of the human rights of the individual.

19. Lastly, responding to the Special Rapporteur’s appeal, he said that his preference was for the maintenance of the traditional rule of continuous nationality, which he thought was well established in State practice.

20. The CHAIRMAN said that the Commission would resume its consideration of the topic during the second part of its session.

<sup>24</sup> *Yearbook . . . 2000*, vol. II (Part Two), para. 495.

<sup>25</sup> See *Yearbook . . . 1995*, vol. I, 2390th meeting, para. 45.

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

[Agenda item 1]

21. Mr. TOMKA (Chairman of the Drafting Committee) announced that Mr. Rodríguez Cedeño would take part in the work of the Drafting Committee on reservations to treaties.

*The meeting rose at 11.10 a.m.*

**2681st MEETING**

*Tuesday, 29 May 2001, at 10.05 a.m.*

*Chairman:* Mr. Peter KABATSI

*Present:* Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candiotti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Lukashuk, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

**State responsibility<sup>1</sup> (continued)\* (A/CN.4/513, sect. A, A/CN.4/515 and Add.1–3,<sup>2</sup> A/CN.4/517 and Add.1,<sup>3</sup> A/CN.4/L.602 and Corr.1 and Rev.1)**

[Agenda item 2]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE  
ON SECOND READING

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the report of the Committee containing the titles and texts of the draft articles on responsibility of States for internationally wrongful acts adopted by the Drafting Committee on second reading (A/CN.4/L.602 and Corr.1).\*\*

\* Resumed from the 2677th meeting.

\*\* Subsequently, A/CN.4/L.602/Rev.1 was issued. For an account of the changes made, see 2701st meeting, paras. 62–67.

<sup>1</sup> For the text of the draft articles provisionally adopted by the Drafting Committee on second reading, see *Yearbook . . . 2000*, vol. II (Part Two), chap. IV, annex.

<sup>2</sup> Reproduced in *Yearbook . . . 2001*, vol. II (Part One).

<sup>3</sup> *Ibid.*

2. Mr. TOMKA (Chairman of the Drafting Committee) said that the Drafting Committee had held 19 meetings from 3 to 23 May and had been able to complete the second reading of the draft articles. There was only one small issue still pending, on which the Committee would report to the Commission in plenary at the second part of the session.

3. The topic of State responsibility was unquestionably one of the most important the Commission had ever undertaken. Successive well-qualified and experienced special rapporteurs had put much of their energy and their intellectual talent into developing the relevant regime. The importance of the contribution of the late Roberto Ago, who had defined the overall approach and structure, could not be overemphasized. While Roberto Ago had created a solid foundation for the topic, it was the current Special Rapporteur, Mr. Crawford, who was largely responsible for its completion. He expressed deep appreciation to the Special Rapporteur for his full cooperation and efficient response to the need to revise the articles. The Special Rapporteur's mastery of the subject and perseverance in finding a solution to difficult and divisive issues had greatly facilitated the task of the Drafting Committee. He also wished to thank the members of the Committee for their cooperation and the constructive manner in which they had discussed the articles.

4. The Drafting Committee had provisionally adopted the draft articles on second reading at the fifty-second session, but had not had sufficient time to undertake a complete review. In addition, given the substantial time lapse between the completion of different parts of the topic, the breadth and the importance of the topic and developments in international law, the Commission had considered it prudent to allow Governments to reflect on the articles once more before finalizing them.

5. The Drafting Committee had reviewed all the draft articles taking carefully into account the comments made by Governments in the Sixth Committee, the comments and observations received from Governments (A/CN.4/515 and Add.1–3) and the views expressed by members of the Commission. It had also worked on the basis of understandings reached by the Commission on the settlement of disputes, serious breaches and counter-measures.

6. In discussing the articles, the Drafting Committee had avoided where possible reopening substantive issues that had already been resolved. For both practical reasons—reopening any major issues at the current late stage would risk delaying the completion of the draft—and for reasons of principle—the Committee had provisionally adopted an entire set of draft articles at the fifty-second session—the current review had therefore to be limited to the consideration of comments made on particular articles. Where justified by comments of Governments or of members of the Commission, however, particular issues had been carefully reconsidered and a number of important changes made. The resulting text was a balanced one that responded fairly and fully to the comments made and reflected reasonably the balance of opinion in the Committee and, he hoped, the Commission. The Committee had considered matters of translation into all the language versions in order to align the vari-