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Summary record of the 2950th meeting

Topic:
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Commentary to draft article 36 (Scope of international obligations set out in this Part)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

69. Mr. PELLET said that the inclusion of the word “likely” in the last sentence of the paragraph was indicative of an excessively cautious approach: the issues of international responsibility arising in the context of employment were certainly similar to those examined in the draft. He asked if any of the draft articles actually stipulated that an international organization was exempt from responsibility *vis-à-vis* its staff. The radical statement contained in paragraph (5) had been a shattering revelation, especially as in some of his reports the Special Rapporteur had rightly quoted examples of the abundant case law of international administrative tribunals.

70. Mr. GAJA (Special Rapporteur) expressed surprise at Mr. Pellet’s comment because, as paragraph (4) made clear, article 36, paragraph 2, was calqued on article 33, paragraph 2, of the draft articles on responsibility of States for internationally wrongful acts.³⁷⁷ That point had been discussed both in plenary and in the Drafting Committee. Part One of the draft articles dealt with the responsibility of international organizations in general, while Part Two and Part Three would cover only such obligations of international organizations as arose from internationally wrongful acts towards States, other international organizations or the international community as a whole. The limitation had been established for reasons which had been fully explained. That was why it was probably more accurate not to make any reference to an international organization’s responsibility towards its staff. The words “likely to be” had been included because the Commission had not analysed that matter and the draft articles and commentaries thereto did not deal with questions of employment. Assertions must not be made unless they were supported by proof, and that was the reason for the cautious tone of the sentence. Nevertheless, as it would not be too bold to say “are similar to”, he could accept the deletion of “are likely to be”. He was not, however, prepared to reopen the question of whether the Commission should include employment issues in the draft articles.

71. Mr. PELLET said that, although he had been convinced by most of the Special Rapporteur’s reply, the paragraph should nevertheless be amended because it was too late to make such a bald statement. He suggested that the sentence should read: “It emerges from article 36, paragraph 2, that the consequences of these breaches are not covered by the draft; certain issues of international responsibility arising in the context of the international civil service are very similar to those examined in the draft.” That wording would make sense and would be consistent with the idea that the draft articles on responsibility of States for internationally wrongful acts were not being called into question. While he had been persuaded by the Special Rapporteur’s argument, he would prefer not to beg the question by omitting an express reference to the relevant article.

Lastly, he once again urged the deletion of the phrase “likely to be”, since he was familiar with the branch of law in question and he saw no reason for such a defensive attitude.

72. Mr. GAJA (Special Rapporteur) repeated that he was prepared to delete “likely to be” but said that he had not quite grasped Mr. Pellet’s first proposal. The purpose of the paragraph in question was to explain the text of the article. It should not imply that what was said in Part Two with regard to States or other organizations would necessarily apply to natural persons.

73. Mr. PELLET drew attention to the fact that article 1, on the scope of the draft articles, stated that the draft articles applied to the international responsibility of an international organization for an act that was wrongful under international law. It excluded responsibility *vis-à-vis* officials or staff only in article 36, paragraph 2. While he agreed with the explanation of that exclusion provided by the Special Rapporteur, namely that the draft articles on the responsibility of international organizations should not diverge from those on State responsibility, he still did not concur with the wording of the last sentence of paragraph (5) and thought that it should be amended in the manner he had proposed.

74. The CHAIRPERSON suggested that the Special Rapporteur should prepare a proposal which would satisfy Mr. Pellet and submit it to the Commission at the next meeting.

The meeting rose at 5.55 p.m.

2950th MEETING

Tuesday, 7 August 2007, at 10 a.m.

Chairperson: Mr. Ian BROWNLIE

Present: Mr. Caffisch, Mr. Candioti, Mr. Comisário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Mr. Yamada.

Draft report of the Commission on the work of its fifty-ninth session (*continued*)

CHAPTER VIII. *Responsibility of international organizations (continued)* (A/CN.4/L.713 and Add.1-3)

C. **Text of the draft articles on responsibility of international organizations provisionally adopted so far by the Commission (*continued*)** (A/CN.4/L.713/Add.1-3)

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-NINTH SESSION (*continued*)

1. The CHAIRPERSON recalled that two questions had been left in abeyance during the adoption of the

³⁷⁷ *Ibid.*, pp. 28 and 94.

commentaries contained in the addendum to the chapter on responsibility of international organizations (A/CN.4/L.713/Add.1): paragraph (2) of the commentary to draft article 32 and paragraph (5) of the commentary to draft article 36. The Special Rapporteur had indicated that he would check the corresponding article of the draft articles on responsibility of States for internationally wrongful acts and that he would meet with Mr. Pellet to finalize new wording for the last sentence of paragraph (5) of the commentary to draft article 36.

Commentary to draft article 32 (Continued duty of performance) (concluded)

Paragraph (2) (concluded)

2. Mr. GAJA (Special Rapporteur), referring to paragraph (2) of the commentary to draft article 32, proposed that the words “and of the breach” should be inserted at the end of the second sentence and that a third sentence should be added, to read: “Should, for instance, an international organization be under the obligation to transfer some persons or property to a certain State, that obligation could no longer be performed once those persons or that property have been transferred to another State in breach of the obligation.”

Paragraph (2) of the commentary to draft article 32, as amended, was adopted.

The commentary to draft article 32, as amended, was adopted.

Commentary to draft article 36 (Scope of international obligations set out in this Part) (continued)

Paragraph (5) (continued)

3. Mr. GAJA (Special Rapporteur) said that the last sentence of paragraph (5) of the commentary to draft article 36 should be amended to read: “While the consequences of these breaches, as stated in paragraph (1), are not covered by the draft, certain issues of international responsibility arising in the context of employment are arguably similar to those that are examined in the draft.”

CHAPTER IV. *Reservations to treaties* (A/CN.4/L.706 and Add.1–3)

4. The CHAIRPERSON invited the members of the Commission to begin the adoption of chapter IV, on reservations to treaties, of the draft report of the Commission.

A. **Introduction** (A/CN.4/L.706)

Paragraphs 1 to 4

Paragraphs 1 to 4 were adopted.

Paragraph 5

5. Ms. ESCARAMEIA asked whether the information in the footnote at the end of the paragraph was up to date.

6. Mr. PELLET (Special Rapporteur) said that he would check on that point and forward the relevant information to the Secretariat.

Paragraph 5 was adopted, subject to that amendment.

Paragraphs 6 to 9

Paragraphs 6 to 9 were adopted.

Section A was adopted, subject to the amendment of paragraph 5.

B. **Consideration of the topic at the present session** (A/CN.4/L.706/Add.1–2)

Paragraph 1

7. Mr. PELLET (Special Rapporteur) said that, since the topic was his, he had drafted the commentary and he had noticed that a number of mistakes had slipped through. He would therefore give the corrections directly to the Secretariat, unless the English version was also affected. He also asked what was meant by the asterisk which appeared in parentheses in paragraph 1 of the French text.

8. The CHAIRPERSON said that the Secretariat would check whether the asterisk could be deleted.

Paragraph 1 was adopted.

Paragraphs 2 and 3

9. The CHAIRPERSON said that paragraphs 2 and 3 should be replaced by the following:

“2. The Commission considered the eleventh report of the Special Rapporteur at its 2914th to 2920th meetings, held on 7 to 11 and on 15 and 16 May 2007, and the twelfth report at its 2936th to 2940th meetings, held on 13 and on 17 to 20 July 2007.

“3. At its 2917th, 2919th and 2920th meetings, held on 10, 15 and 16 May 2007, the Commission decided to refer draft guidelines 2.6.3 to 2.6.6, 2.6.7 to 2.6.15 and 2.7.1 to 2.7.9 to the Drafting Committee and to review the wording of draft guideline 2.1.6 in the light of the discussion. At its 2940th meeting, held on 20 July, the Commission decided to refer draft guidelines 2.8 and 2.8.1 to 2.8.12 to the Drafting Committee.”

Paragraphs 2 and 3, as amended, were adopted.

1. INTRODUCTION BY THE SPECIAL RAPPORTEUR OF HIS ELEVENTH REPORT

Paragraph 4

10. Mr. VASCIANNIE proposed that the words “to Practice” should be inserted after “Guide” in the fourth line.

Paragraph 4, as amended, was adopted.

Paragraph 5

11. The CHAIRPERSON, speaking as a member of the Commission, proposed that the end of the last sentence should be modified to read: “... the object and purpose of the treaty would render ineffective the procedure for acceptance of and objections to reservations under article 20”.

Paragraph 5, as amended, was adopted.

Paragraph 6

12. Mr. CAFLISCH, referring to the last sentence, said that it was not “surprising” that States invoked incompatibility with the object and purpose of the treaty as a ground when formulating an objection.

13. Mr. PELLET (Special Rapporteur) said that he had in fact intended to propose that the end of the sentence should be amended to read: “States did, surprisingly enough, quite frequently invoke that very ground.”

14. Mr. CAFLISCH said that it was the word “surprisingly” which posed a problem for him, but he would not insist.

Paragraph 6, as amended by the Special Rapporteur, was adopted.

Paragraph 7

15. Mr. PELLET (Special Rapporteur) said that the paragraph should read: “Draft guideline 6.1.3 conveyed the idea that any State or international organization had the freedom to make objections.”

Paragraph 7, as amended, was adopted.

Paragraph 8

16. Mr. PERERA said that, in the sixth line, the words “the reservation” should be replaced by “the objection”.

17. Mr. VASCIANNIE said that the title of the advisory opinion referred to in the paragraph should be cited [*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*].

18. Mr. PELLET (Special Rapporteur) said that the sentence related to the position of Sir Humphrey Waldock and that reference should thus be made to his report.³⁷⁸

19. The CHAIRPERSON said that the Secretariat would take care of the matter.

Paragraph 8, as amended, was adopted.

Paragraphs 9 to 11

Paragraphs 9 to 11 were adopted.

Paragraph 12

20. Mr. GAJA proposed that the third sentence should be amended to read: “The intention should be expressed at the latest when the objection would produce its full effects.”

Paragraph 12, as amended, was adopted.

Paragraphs 13 to 18

Paragraphs 13 to 18 were adopted.

Paragraph 19

21. Mr. PELLET (Special Rapporteur) said that the word “Thus” at the beginning of the third sentence should be deleted because the third sentence was not an illustration of the preceding one, but introduced a different idea.

Paragraph 19, as amended, was adopted.

Paragraphs 20 and 21

Paragraphs 20 and 21 were adopted.

2. SUMMARY OF THE DEBATE

Paragraph 22

22. Mr. GAJA, noting that it was his opinion that was reflected in paragraph 22, said that two amendments should be made. In the second sentence, the words “did not draw any distinction” should be replaced by “did not expressly make any distinction” and the beginning of the third sentence should be deleted so that the sentence would start with the words “One might well ask”.

Paragraph 22, as amended, was adopted.

Paragraphs 23 to 26

Paragraphs 23 to 26 were adopted.

Paragraph 27

23. Mr. McRAE, recognizing the comment he had made on NAFTA, proposed that the words “certain ‘reservations’ or derogations” should be replaced by “certain derogations, but called them reservations”.

Paragraph 27, as amended, was adopted.

Paragraph 28

24. Mr. NOLTE said that, in the third line, the word “clarified” should be replaced by “qualified”.

Paragraph 28, as amended, was adopted.

Paragraphs 29 to 37

Paragraphs 29 to 37 were adopted.

Paragraph 38

25. Mr. GAJA said that, in the second sentence, the words “should also be drawn” should be replaced by “was drawn”.

Paragraph 38, as amended, was adopted.

Paragraphs 39 and 40

Paragraphs 39 and 40 were adopted.

Paragraph 41

26. Mr. PELLET (Special Rapporteur) said that the words “did not produce legal effects” at the end of the first sentence should be replaced by “did not produce any legal effect”.

Paragraph 41, as amended, was adopted.

³⁷⁸ Yearbook ... 1962, vol. II, document A/CN.4/144 and Add.1.

Paragraphs 42 and 43

Paragraphs 42 and 43 were adopted.

Paragraph 44

27. Mr. PELLET (Special Rapporteur) said that the last part of paragraph 44, starting with the third sentence, should be made into a separate paragraph 44 *bis*.

Paragraph 44, as amended, was adopted.

Paragraph 45

28. After a debate in which Mr. PELLET (Special Rapporteur), Ms. ESCARAMEIA and Mr. GAJA took part, Mr. PELLET proposed that the penultimate sentence should be amended to read: "An absolute prohibition seemed far too categorical to be justified. For other speakers, it was not possible to draw an exact parallel between widening of the scope of a reservation and widening of the scope of an objection." He also suggested that in the last line, the words "an additional" should be replaced by "a widened".

It was so decided.

Paragraph 45, as amended, was adopted.

Paragraph 46

29. Mr. PELLET (Special Rapporteur) said that the last sentence should be made into a separate paragraph 46 *bis*.

30. Mr. GAJA said that the words "every reservation" in the second sentence should be replaced by "different reservations".

Paragraph 46, as amended, was adopted.

3. SPECIAL RAPPORTEUR'S CONCLUDING REMARKS

Paragraph 47

Paragraph 47 was adopted.

Paragraph 48

31. Mr. PELLET (Special Rapporteur) said that the end of the last sentence should be amended to read: "given that the Guide to Practice contained only residual rules, which States were free to follow or not, by rendering them inapplicable through treaty provisions which provided otherwise". It was not true that the Guide to Practice contained only "recommendations": it aimed to reflect legal rules, even if they were not binding.

The adoption of paragraph 48 was postponed pending the English translation of the amendment to the last sentence.

Paragraph 49

32. Mr. NOLTE, noting that there was an inconsistency in the English text between the first and the last sentences, suggested that the words "should be included in the context of" in the first sentence should be replaced by "should be put in the context of".

33. Mr. CAFLISCH proposed that, in the English version, in the first sentence, the words "somewhat convinced by the argument" should be replaced by "receptive to the argument".

Paragraph 49, as amended in the English version, was adopted.

Paragraphs 50 to 52

Paragraphs 50 to 52 were adopted.

Paragraph 53

34. Mr. FOMBA said that, in the French version, the words "*plutôt qu'au caractère*" should be replaced by "*plutôt que sur le caractère*".

Paragraph 53, as amended in the French version, was adopted.

Paragraphs 54 and 55

Paragraphs 54 and 55 were adopted.

Paragraph 56

35. Mr. PELLET (Special Rapporteur) said that the part of the paragraph that began with the second sentence should become a separate paragraph 56 *bis*.

Paragraph 56, as amended, was adopted.

Paragraph 57

Paragraph 57 was adopted.

Paragraph 58

36. Mr. NOLTE said that, for the sake of consistency with paragraph 41, the words "objecting declarations" should be replaced by "objecting communications" in the last sentence.

Paragraph 58, as amended, was adopted.

Paragraph 59

37. Mr. PELLET (Special Rapporteur), following up on a suggestion by Mr. Fomba, proposed that, in the last sentence, the words "a late objection did not produce the same legal effects as those produced by an objection formulated on time" should be amended to read: "a late objection did not produce legal effects".

Paragraph 59, as amended, was adopted.

Paragraphs 60 to 63

Paragraphs 60 to 63 were adopted.

C. Text of the draft guidelines on reservations to treaties provisionally adopted so far by the Commission (A/CN.4/L.706/Add.3)

1. TEXT OF THE DRAFT GUIDELINES

38. The CHAIRPERSON, recalling that subsection C.1 (*Text of the draft guidelines*) had already been adopted, invited the members of the Commission to consider subsection C.2.

2. TEXT OF THE DRAFT GUIDELINES AND COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-NINTH SESSION

Paragraph 1

Paragraph 1 was adopted.

Commentary to draft guideline 3.1.5 (Incompatibility of a reservation with the object and purpose of the treaty)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

39. Mr. PELLET (Special Rapporteur) said that the bibliographical references in the first footnote to the paragraph should be amended to read: “(P. Reuter, “*Solidarité et divisibilité des engagements conventionnels*”, in Y. Dinstein, *International Law at a Time of Perplexity: Essays in Honour of Shabtai Rosenne*, Dordrecht, Martinus Nijhoff, 1989, p. 627; also reproduced in P. Reuter, *Le développement de l’ordre juridique international—Écrits de droit international*, Paris, Economica, 1995, p. 366)”.

40. Mr. GAJA said that, in the first sentence, the word “reservations” should be replaced by “article 19” because that fit with “seven other provisions of the Vienna Convention, including one—article 20, paragraph 2—which concerns reservations”.

41. Mr. PELLET (Special Rapporteur) said that the French version did not need to be corrected because it said, much more cautiously, that the concept of the object and purpose of the treaty was far from being confined “to the field of reservations” (“*au domaine des réserves*”), and not “to reservations”. The problem was thus one of translation.

42. Mr. GAJA said that, even with that correction, the French text gave rise to a problem because “the field of reservations” and “seven other provisions” could not be placed on the same plane. One way or another, article 19 had to be introduced.

43. Mr. PELLET (Special Rapporteur) said that, in that case, it would be preferable to say “... to article 19 ..., including outside the field of reservations”.

44. Mr. GAJA proposed that the first sentence should be replaced by two sentences which would read: “In fact, the concept of the object and purpose of the treaty is far from being confined to reservations. In the Vienna Convention, it occurs in eight provisions, only two of which—article 19 (c) and article 20, paragraph 2—concern reservations.”

Paragraph (2) was adopted with the amendment proposed by Mr. Gaja.

Paragraph (3)

Paragraph (3) was adopted.

Paragraph (4)

45. Mr. GAJA said that, in the last footnote to the paragraph, the words “the Japanese member of the

Commission” after “Tsuruoka” should be deleted: there was no need to mention nationality, especially since that had not been done for the other members cited.

46. Mr. PELLET (Special Rapporteur) said that he had thought it useful to specify that, until the end, Japan had taken very inflexible positions on draft article 18, although he admitted that this detail was more appropriate in a report of the Special Rapporteur than in a report of the Commission.

Paragraph (4) was adopted with the amendment proposed by Mr. Gaja.

Paragraph (5)

47. Mr. GAJA said that, in the English version, the words “in a reasonable manner” should be added after “resolving”.

Paragraph (5), as amended in the English version, was adopted.

Paragraph (6)

48. Mr. PELLET (Special Rapporteur) said that, at the end of the English version of the paragraph, the word “*sic*” in square brackets should be deleted because, as he understood it, “paragraph” was the English translation of both “*paragraphe*” and “*alinéa*”. It should, however, be retained in the French version.

Paragraph (6), as amended, was adopted.

Paragraphs (7) to (11)

Paragraphs (7) to (11) were adopted.

Paragraph (12)

49. Mr. NOLTE said that he had doubts about whether the word “effectiveness”, which had been taken from the judgment of the European Court of Human Rights cited in the first footnote to the paragraph, was appropriate. The word played a much greater role in the European context than in public international law in general, and what was considered the core of the treaty was thereby enlarged. Thus, in a sense, any reservation impaired the effectiveness of the treaty. That was probably not what the Commission meant and he therefore suggested that the reference to “effectiveness” should be deleted or at least qualified.

50. The CHAIRPERSON, speaking as a member of the Commission, said that he was opposed to the deletion of a term which a particular court had used. It would be better to comment on it.

51. Mr. PELLET (Special Rapporteur), acknowledging that it was debatable whether the effectiveness of a treaty could be placed on an equal footing with its “*raison d’être*” or its “fundamental core”, proposed that the sentence should be amended to read: “In other words, it is the *raison d’être* of the treaty, its ‘fundamental core’, that is to be preserved in order to avoid endangering the ‘effectiveness’ of the treaty as a whole.” The reference to the footnote in question would then be placed at the end of the sentence.

Paragraph (12), as amended, was adopted.

Paragraph (13)

52. Mr. PELLET (Special Rapporteur) said that, at the beginning of the second sentence, the words “Most members of the Commission” should be replaced by “Some members of the Commission”.

Paragraph (13), as amended, was adopted.

Paragraph (14)

53. Mr. PELLET (Special Rapporteur) said that the last footnote to the paragraph should read: “See paragraph (10) above” (and not “See paragraph (12) above”).

Paragraph (14), as amended, was adopted.

Paragraph (15)

54. Mr. NOLTE proposed that the end of the first sentence should be amended to read: “rather than establishing a clear criterion that can be directly applied in all cases” so as not to give the impression that the criterion established by draft guideline 3.1.5 was never directly applicable.

Paragraph (15), as amended, was adopted.

The commentary to draft guideline 3.1.5, as amended, was adopted.

Commentary to draft guideline 3.1.6 (Determination of the object and purpose of the treaty)

Paragraph (1)

55. Mr. PELLET (Special Rapporteur) said that, for the sake of clarity, the words “in which category the process falls” should be replaced by “and it is in fact a question of interpretation”.

Paragraph (1), as amended, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

56. Mr. NOLTE, pointing out that it was difficult to refer to the concept of “intuition” in such a context, proposed that the end of the first sentence should simply read: “in which subjectivity inevitably plays a considerable part.”

Paragraph (4), as amended, was adopted.

Paragraphs (5) to (7)

Paragraphs (5) to (7) were adopted.

Paragraph (8)

57. After a discussion in which Mr. GAJA, Mr. PELLET (Special Rapporteur), Mr. NOLTE, Mr. SABOIA and the CHAIRPERSON took part, it was decided that the words “Thus, for example” at the beginning of the second sentence should be deleted and that the last phrase in the first footnote to the paragraph should end with the following words: “here, however, the focus is on the validity of that quasi-reservation clause.”

Paragraph (8), as amended, was adopted.

Paragraphs (9) and (10)

Paragraphs (9) and (10) were adopted.

Commentary to draft guideline 3.1.7 (Vague or general reservations)

Paragraph (1)

58. Mr. McRAE, referring to the last sentence, said he did not think that there was a great difference between “worded” and “formulated” and therefore suggested that the words “rather than ‘formulated’” should be deleted.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (7)

Paragraphs (2) to (7) were adopted.

Paragraph (8)

59. Mr. PELLET (Special Rapporteur) said that, in the first sentence of the French version, the word “*que*”, which was a mistake, should be replaced by “*et non*”.

Paragraph (8), as amended in the French version, was adopted.

Paragraph (9)

60. The CHAIRPERSON suggested that, in the first sentence, the words “as well”, which were not needed, be deleted.

61. Mr. GAJA proposed that, in the second sentence, the following phrase should be inserted after the word “judged”: “according to article 57 of the European Convention on Human Rights”.

Paragraph (9), as amended, was adopted.

Paragraph (10)

Paragraph (10) was adopted.

Paragraph (11)

Paragraph (11) was adopted, subject to minor drafting changes.

The commentary to draft guideline 3.1.7, as amended, was adopted.

Commentary to draft guideline 3.1.8 (Reservations to a provision reflecting a customary norm)

Paragraph (1)

62. Mr. PELLET (Special Rapporteur) said that, at the end of the first sentence of the French version, the word “*conventionnelle*” should be replaced by “*coutumière*”.

Paragraph (1), as amended in the French version, was adopted.

Paragraphs (2) to (15)

Paragraphs (2) to (15) were adopted.

Paragraph (16)

63. Mr. PELLET (Special Rapporteur) said that, for the sake of consistency, the words “set forth” in the first line should be replaced by “reflected”.

Paragraph (16), as amended, was adopted.

Paragraphs (17) and (18)

Paragraphs (17) and (18) were adopted.

The commentary to draft guideline 3.1.8, as amended, was adopted.

Commentary to draft guideline 3.1.9 (Reservations contrary to a rule of jus cogens)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

64. Mr. PELLET (Special Rapporteur) said that, in the last footnote to the paragraph, the reference to “paragraph (7)” should be changed to “paragraph (2)” and the words “see paragraph (3) above” should be inserted at the end.

Paragraph (5), as amended, was adopted.

Paragraphs (6) to (9)

Paragraphs (6) to (9) were adopted.

Paragraph (10)

The adoption of paragraph (10) was postponed until a later meeting.

The meeting rose at 1 p.m.

2951st MEETING

Tuesday, 7 August 2007, at 3.05 p.m.

Chairperson: Mr. Ian BROWNLIE

Present: Mr. Cafilisch, Mr. Candiotti, Mr. Comissário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobson, Mr. Kolodkin, Mr. McRae, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Mr. Yamada.

Draft report of the Commission on the work of its fifty-ninth session (continued)

CHAPTER IV. Reservations to treaties (continued) (A/CN.4/L.706 and Add.1-3)

B. Consideration of the topic at the present session (continued) (A/CN.4/L.706/Add.1-2)

1. The CHAIRPERSON invited the Commission to resume its consideration of document A/CN.4/L.706/Add.1.

3. SPECIAL RAPPORTEUR'S CONCLUDING REMARKS

Paragraph 48 (*concluded*)

2. The CHAIRPERSON recalled that the adoption of paragraph 48 had been deferred, pending the English translation of an amendment to the last sentence. He read out the following proposed text and invited members to comment on the alternatives placed between square brackets: “He wondered, however, whether that last point ought to be mentioned in the text, given that the Guide to Practice only contained [auxiliary] [residuary] [default] rules, which States were free to follow or set aside by contrary treaty provisions.”

3. Mr. PELLET (Special Rapporteur) expressed support for the proposed text and said that the adjective “auxiliary” seemed to be the best translation for the French “*supplétive de volonté*”.

Paragraph 48, as amended, was adopted.

Section B, as amended, was adopted.

C. Text of the draft guidelines on reservations to treaties provisionally adopted so far by the Commission (concluded) (A/CN.4/L.706/Add.3)

2. TEXT OF THE DRAFT GUIDELINES AND COMMENTARIES THERETO ADOPTED BY THE COMMISSION AT ITS FIFTY-NINTH SESSION (*concluded*)

4. The CHAIRPERSON then invited the Commission to resume its consideration of document A/CN.4/L.706/Add.3.

Commentary to draft guideline 3.1.6 (Determination of the object and purpose of the treaty) (concluded)

Paragraph (5) (*concluded*)

5. The CHAIRPERSON said that the word “Committee” should be replaced by “Commission”, thereby aligning the English text with the French original. He also drew attention to an error in the footnote related to paragraph (5), where the date “1955” should read “1994”. The same correction should be made to all other references to the same work by W. A. Schabas³⁷⁹ wherever they appeared in the draft report.

Paragraph (5), as amended, was adopted.

The commentary to draft guideline 3.1.6, as amended, was adopted.

Commentary to draft guideline 3.1.7 (Vague or general reservations) (concluded)

Paragraph (7)

6. The CHAIRPERSON said that Mr. Hmoud wished to propose an amendment to paragraph (7) of the commentary to draft guideline 3.1.7, which the Commission had dealt with at the previous meeting. If he heard no objection, he would take it that the procedure was acceptable to the Commission.

It was so decided.

³⁷⁹ W. A. Schabas, “Reservations to human rights treaties: time for innovation and reform”, *Canadian Yearbook of International Law* 1994.