

Document:-
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Summary record of the 3142nd meeting

Topic:
Protection of persons in the event of disasters

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3142nd MEETING

Friday, 6 July 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, Ms. Jacobsson, 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.

Protection of persons in the event of disasters (continued) (A/CN.4/650 and Add.1, sect. C, A/CN.4/652, A/CN.4/L.812)

[Agenda item 4]

FIFTH REPORT OF THE SPECIAL RAPPORTEUR (concluded)

1. The CHAIRPERSON invited the Special Rapporteur to sum up the debate on his fifth report on the protection of persons in the event of disasters (A/CN.4/652).

2. Mr. VALENCIA-OSPINA (Special Rapporteur) said that the debate had been enriched by lengthy and substantive discussion of the very basis and aims of the draft articles and the degree to which the 11 draft articles thus far provisionally adopted fulfilled those aims. Although it had not, perhaps, been fully recognized as such, the exchange of views had in fact represented an attempt to reopen discussion of draft articles that had already been adopted on first reading after four years of intense, collective effort to reconcile opposing positions. However, the participants in the debate had acknowledged, in keeping with the long-standing practice of the Commission, that their comments could be considered during the second reading of the draft articles as a whole, in the light of comments from States after the text had been presented to the Sixth Committee of the General Assembly. In the meantime, the opinions expressed during the past week would be reflected in the summary records of the proceedings, and the Special Rapporteur would take them into account at the appropriate time.

3. The question of the final form of the draft articles had been raised several times. The Commission had not taken a position on the matter, as the decision would be in the hands of the General Assembly. That the Commission was proceeding by formulating draft articles in no way prejudged that decision. The resulting texts could ultimately be presented in whatever form was deemed most suitable—whether a convention or a guide to practice.

4. The summary in the fifth report of the comments made by States and international organizations in the Sixth Committee had inspired some Commission members to discuss

the role such comments should play in the Commission's work. He concurred with, and not contradicted, the opinion expressed by several members that such comments constituted an important element but not a determining factor in the Commission's work on a task entrusted to it by the General Assembly.

5. With regard to the three draft articles proposed in his fifth report, Commission members had unanimously decided to refer them to the Drafting Committee, acknowledging that their specific comments could be addressed during the drafting process. It had been suggested that draft articles A and 13 should be supplemented with provisions reflecting the various elements on which they were based, presented systematically. Draft article 13, in particular, should set forth in a non-exhaustive manner, as was done in draft article A, the principal areas that fell within the article's scope of application. He agreed with that approach and proposed to make the corresponding drafting suggestions for draft articles A and 13 in the Drafting Committee.

6. In response to some of the comments on draft article A, he wished to clarify that, while draft article 5 established in general terms the duty to cooperate in the context of disaster response, draft article A specified the main areas in which such cooperation should take place. Some of the misgivings expressed during the recent debate had had to do with the use of the expression "shall provide" in the first sentence of draft article A, which seemed to imply an obligation to provide particular forms of assistance, rather than an elaboration of the duty to cooperate set out in draft article 5. The solution was to delete the words "shall provide" and make the necessary adjustments to the text, and he would propose that solution in the Drafting Committee. A few years ago, the Commission had taken a similar approach in the articles on the law of transboundary aquifers.²²⁵ Just as article 7 of those articles enshrined the general obligation to cooperate in the use and protection of transboundary aquifers, draft article 5 of the text under consideration did the same in the context of disasters. Furthermore, just as articles 16 and 17 of the articles on the law of transboundary aquifers detailed areas in which the obligation would manifest itself, draft article A of the current draft performed a similar function for disasters.

7. The debate had yielded other useful suggestions for improving the wording of draft articles 13 and 14, which he would highlight for the Drafting Committee. His flexibility in taking into account a wide array of suggestions from Commission members reflected his belief that a Special Rapporteur's role entailed bringing together the various positions in order to achieve the best possible expression of the collective will of the Commission, rather than rigidly imposing personal preferences. On that basis, he proposed that draft articles A, 13 and 14 should be referred to the Drafting Committee accompanied by the various

²²⁵ General Assembly resolution 63/124 of 11 December 2008, annex. The draft articles on the law of transboundary aquifers adopted by the Commission and commentaries thereto appear in *Yearbook ... 2008*, vol. II (Part Two), paras. 53–54.

drafting proposals submitted by members, including the alternative wording suggested for draft article 13.

8. It had been suggested that the Commission should annex to the draft articles a model agreement based on the model status-of-forces agreements between the United Nations and countries hosting peacekeeping operations.²²⁶ It had also been suggested that a similar model agreement could be elaborated to cover non-military actors providing assistance. While such highly detailed models were of practical interest, in his view their drafting fell outside the Commission's purview, and at any rate outside the Special Rapporteur's mandate.

9. He intended to devote most of his next report to the topics of prevention, preparedness and disaster mitigation. In preparing draft articles, he would bear in mind some of the comments made during the consideration of the fifth report—for example, those regarding measures that should be included in national legislation and measures to protect relief workers, especially United Nations personnel. In a future report, he would also propose draft articles on use of terms and miscellaneous provisions preserving the position of the United Nations, IFRC and ICRC.

10. If, once the Drafting Committee had adopted revised versions of draft articles A, 13 and 14, the Commission found them inadequate, he would be happy to submit more detailed suggestions. In conclusion, he thanked those members who had participated in the discussion of the fifth report for their contributions.

11. The CHAIRPERSON said that, if he heard no objection, he would take it that the Commission wished to refer draft articles A, 13 and 14 to the Drafting Committee.

It was so decided.

The meeting rose at 10.30 a.m.

3143rd MEETING

Tuesday, 10 July 2012, at 10.05 a.m.

Chairperson: Mr. Lucius CAFLISCH

Present: Mr. Candioti, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, 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.

Immunity of State officials from foreign criminal jurisdiction²²⁷ (A/CN.4/650 and Add.1, sect. A, A/CN.4/654)

[Agenda item 5]

PRELIMINARY REPORT OF THE SPECIAL RAPPORTEUR

1. The CHAIRPERSON invited the Special Rapporteur to introduce her preliminary report on the immunity of State officials from foreign criminal jurisdiction (A/CN.4/654).

2. Ms. ESCOBAR HERNÁNDEZ (Special Rapporteur) said that since she was addressing the Commission in plenary meeting for the first time in her capacity as Special Rapporteur for the topic of immunity of State officials from foreign criminal jurisdiction, she wished to make two brief statements before introducing her preliminary report. First of all, she was grateful to the members of the Commission for having appointed her Special Rapporteur, which was an honour and a genuine privilege. She would do everything within her power to carry out her task and dared to hope that by the end of the current quinquennium her work would have been up to the Commission's expectations. Second, she wished to express her acknowledgement and gratitude to Mr. Kolodkin, the previous Special Rapporteur for the topic, both for the work that he had done over five years and for his valuable contributions—the three reports²²⁸ that, together with the memorandum²²⁹ by the Secretariat, formed the historic basis of the Commission's work—which must be taken duly into account as the Commission considered the topic.

3. The preliminary report had been issued in all the official languages of the United Nations. However, a number of editorial corrections should be made to the Spanish text: in paragraphs 66 and 73, the French word “*fonctionnaire*” should be replaced with “*représentant de l'État*”, while in paragraph 70 the term “*ratione personae*” should be replaced with “*ratione materiae*”; similarly, in the English version, the word “immunity” in the third sentence of paragraph 49 should be changed to “impunity”, the word “contention” in paragraph 54 should be changed to “consensus”, and in paragraphs 66 and 73, the French word “*fonctionnaire*” should again be replaced with “*représentant de l'État*”. As the improperly used terms could mislead the reader, she urged members to kindly take note of the corrections she had indicated.

4. The preliminary report had three chapters. In the introduction, she briefly outlined the work done by the Commission on the topic thus far. Afterwards, she described the progress made with regard to the substance of the topic, and she set out the main elements of the reports submitted by Mr. Kolodkin and the main thrust of the debates that had

²²⁷ At its 3132nd meeting on 22 May 2012, the Commission appointed Ms. Escobar Hernández, Special Rapporteur, to replace Mr. Kolodkin, who was no longer a member of the Commission.

²²⁸ *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/601 (preliminary report), *Yearbook ... 2010*, vol. II (Part One), document A/CN.4/631 (second report) and *Yearbook ... 2011*, vol. II (Part One), document A/CN.4/646 (third report).

²²⁹ A/CN.4/596 and Corr.1 (document available from the Commission's website).

²²⁶ Model status-of-forces agreement for peace-keeping operations: Report of the Secretary-General (A/45/594).