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Summary record of the 1526th meeting

Topic:
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ernments and for the international organizations concerned to say what needs arise...”.

52. Mr. USHAKOV suggested that Mr. Schwebel's amendment should be modified to refer, at the beginning of the sentence, not to “governments” but to “the parties” to the Vienna Convention, since only the parties to a treaty had the right to interpret it.

53. Mr. RIPHAGEN supported the suggestions made by Mr. Schwebel and Mr. Ushakov.

54. The CHAIRMAN said that, if there were no objections, he would take it that the Commission accepted the drafting changes suggested by the Special Rapporteur, by Mr. Schwebel and by Mr. Ushakov.

It was so agreed.

Paragraph (8), as amended, was approved.

The commentary to article 36 bis, as amended, was approved.

Commentary to article 37 (Revocation or modification of obligations or rights of third States or third international organizations)

Paragraph (1)

55. Mr. USHAKOV emphasized that it should be indicated that the fact that paragraphs 5 and 6 of article 37 had been placed in square brackets meant that those paragraphs had not been adopted.

Paragraph (1), as amended, was approved.

Paragraph (2)

56. Mr. REUTER (Special Rapporteur) proposed that the words “reproduce the exact wording of”, in the first sentence, should be replaced by “follow the wording of”.

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraphs (3)-(5)

Paragraphs (3)-(5) were approved.

The commentary to article 37, as amended, was approved.

Commentary to article 38 (Rules in a treaty becoming binding on third States or third international organizations through international custom)

Paragraphs (1)-(4)

Paragraphs (1)-(4) were approved.

Paragraph (5)

57. Mr. REUTER (Special Rapporteur) proposed that paragraph (5) should be replaced by the following text:

“The present draft article does not prejudice in one way or the other the possibility that the effects of the process of the formulation of customary law might extend to international organizations, and it

was with that consideration in mind that the article was adopted by the Commission.”

It was so agreed.

Paragraph (5), as amended, was approved.

The commentary to article 38, as amended, was approved.

Section B as a whole, as amended, was approved.

Chapter V as a whole, as amended, was approved.

The meeting rose at 1 p.m.

1526th MEETING

Wednesday, 26 July 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Review of the multilateral treaty-making process (para. 2 of General Assembly resolution 32/48) (A/CN.4/L.283)

[Item 8 of the agenda]

1. The CHAIRMAN invited the Chairman of the Working Group on review of the multilateral treaty-making process to introduce the Group's report (A/CN.4/L.283).

2. Mr. QUENTIN-BAXTER (Chairman of the Working Group) said that the Group's report was constructed in such a way that the Commission, if it so wished, could make paragraphs 4 to 9 part of its own report to the General Assembly.

3. In paragraph 4 there was a general statement of the Commission's attitude to a review of the multilateral treaty-making process. The paragraph made it clear that the Commission regarded the question as an important one and that, in view of the role the Commission played in the progressive development of international law, it welcomed the opportunity to make a contribution to the study of the matter.

4. In paragraphs 5 and 6, the Working Group made the point, which followed directly from the terms of General Assembly resolution 32/48, that the role of

the Secretary-General in that undertaking—which consisted in preparing a factual report on the techniques and procedures used in multilateral treaty-making within the United Nations—differed from that of the Commission, whose observations would necessarily be more in the nature of an appraisal.

5. In paragraph 7, the Working Group pointed out that the achievements of the Commission were the outcome of the work of the members of the Commission combined with the support the Commission received from the Codification Division of the Office of Legal Affairs. The members of the Working Group were by no means certain that the extent of the support provided by the Codification Division was appreciated outside the Commission.

6. In paragraph 8, the Working Group referred briefly to the substance of the question, noting that it would not be possible to assess the technical and procedural aspects of treaty-making without paying attention to the subject-matter of the topics chosen for codification and progressive development.

7. Lastly, in paragraph 9, the Working Group recommended that the Group be reconstituted at the beginning of the Commission's thirty-first session, taking into account the need for continuity of membership. The Working Group considered it important to ensure that each of the five regional groups was at all times adequately represented on the reconstituted Group, and the Commission might therefore wish to examine the possibility of expanding the Group's membership.

8. The members of the Working Group were of the opinion that the newly constituted Group should hold at least two meetings a week early in the Commission's 1979 session, with a view to submitting a final report to the Commission not later than 30 June 1979. If possible, that report should be submitted earlier, so that the Commission as a whole would have ample time to prepare its report on the subject to the General Assembly. To that end, the Working Group hoped that every member of the Commission would furnish the reconstituted Group, no later than by the end of the first week of the Commission's 1979 session, with a note setting forth his views on the scope of the subject and the manner in which it should be dealt with. It would be helpful if the Secretariat, in transmitting documents to members, were to remind them of that request.

9. The CHAIRMAN said he was sure he was expressing the sentiments of the Commission in congratulating the Chairman and members of the Working Group on their excellent report.

10. Mr. PINTO said that the multilateral treaty-making process was a matter of the highest importance and one that had not been adequately examined. The General Assembly's decision that the subject should be studied was timely. The Commission was in a position to make a major contribution to such a study, and it should examine the problems involved not only with objectivity but also with imag-

ination and creativity. It would not be the Commission's task to consider all aspects of the subject. Indeed, certain vital aspects, such as the social and economic cost of the negotiating process (the international conference) in relation to its productivity and benefits, might not be dealt with by the General Assembly at all. Nevertheless, the legal and institutional aspects of the question provided the Commission with sufficient scope to produce a study that would be of practical and permanent value to the General Assembly and to the world community.

11. The study should be conducted bearing in mind the objectives of the treaty-making process, which were: fair regulation of international activities by means of universally endorsed multilateral instruments; achievement of that first objective through the universal participation of all States in the negotiating process; and achievement of both those objectives through expeditious government action, starting with prompt instructions to delegations at the negotiating stage and ending with early ratification and legislative implementation at the domestic level.

12. Mr. SCHWEBEL agreed with the Chairman of the Working Group that the Group should be reconstituted at the beginning of the Commission's thirty-first session and should be given the opportunity to complete its work early in that session so that the Commission would have ample time to review the Group's final report.

13. Mr. Pinto had been right to draw attention to the essential objectives of the multilateral treaty-making process. He could agree with Mr. Pinto that the universal participation of all States was necessary at some stage of the negotiating process. He could not agree, however, that such participation was necessary at all the stages. The membership of the United Nations had grown so large that to require all Members to take part in the preparation of multilateral treaties would be counter-productive. The Commission itself provided an example of the way in which a body with a smaller membership could produce treaties for universal application. It was a tradition in the United Nations to set up small expert bodies to prepare drafts of instruments that had an effect on international law. The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, which had met prior to the United Nations Conference on the Law of the Sea, had been composed of 90 members, but neither in its preparatory nor in its plenary stages had the Conference made rapid headway.

14. Mr. USHAKOV, referring to paragraph 5 of the report of the Working Group, remarked that the Commission was not called upon to pronounce on the contents of the Secretary-General's report. In particular, it was inappropriate to state that the report "is to be" a factual report, that it "would take account" of other treaty-making practices and that it "would describe" the various technical and procedural United Nations patterns in treaty-making. That being so, it would be best to delete the paragraph.

15. Mr. TSURUOKA noted that, in paragraph 7, the Working Group mentioned two factors that determined the Commission's productive capacity, one of them being the work that members of the Commission could accomplish during an annual session. In that connexion, he observed that each member of the Commission should fully realize the importance of his functions. Other and even more important tasks might sometimes require a member of the Commission to absent himself, but no one should lightly agree to be a member of the Commission. Members of the Commission should perform their duties conscientiously and efficiently.

16. Mr. ŠAHOVIĆ said that the Working Group's excellent report provided a basis for a thorough discussion on a subject to which many States Members of the United Nations attached great importance. The Sixth Committee of the General Assembly had considered that the Commission was the body most competent to examine the multilateral treaty-making process and was expecting it to make a detailed study of that question. The Commission should therefore set aside a sufficiently large number of meetings at its next session for that purpose. It should analyse the experience it had itself acquired and shed light on general world practice in the matter.

17. All the aspects and aims of the undertaking had not yet, it seemed, been clearly defined. It would rest with the States Members of the United Nations and with the Commission itself to provide such clarification. The Commission had a special role to play in that connexion, as the body entrusted with the codification and progressive development of international law.

18. Mr. USHAKOV endorsed the views expressed by Mr. Tsuruoka concerning paragraph 7 of the report. It should be made clear that the first factor upon which the Commission's productive capacity depended was not only the work that its members could accomplish during an annual session, but also the work that they, together with the Special Rapporteurs, accomplished throughout the year. With regard to the second factor, it should be stated that it was the material and documentation required by the Commission for its work that necessitated an increase in personnel and financial resources.

19. Mr. VEROSTA reiterated the appeal he had made to the Special Rapporteurs at the previous session to make every effort to submit more than two or three articles to the Commission annually, as it was very difficult to pronounce on particular articles without knowing the content of those that would follow.

20. Mr. FRANCIS considered Mr. Šahović's comments on the Commission's role in the matter to be very pertinent. Indeed, at the thirty-second session of the General Assembly, Mr. Lauterpacht, of the Australian delegation, who had introduced the draft resolution that had eventually been adopted as resolu-

tion 32/48,¹ had stressed the importance of the role to be played by the Commission.²

21. At the conference of the Asian-African Legal Consultative Committee held in Doha (Qatar) in January 1978, Mr. Nagendra Singh had drawn attention to the lack of co-ordination within the United Nations system in matters of codification. Reference had also been made, at the thirty-second session of the General Assembly, to the need for co-ordination in the treaty-making process and to the part to be played therein by the Sixth Committee and the Commission. To meet that need, the Commission's role in that regard might well have to be expanded.

22. Mr. SUCHARITKUL said that the Working Group's report would pave the way for further consideration by the Commission of the questions raised in the Sixth Committee. The Commission would then have an opportunity to assess its own role in the law-making process. Various bodies, including the First, Third and Sixth Committees of the General Assembly and certain specialized agencies, had been involved in drafting articles on different subjects. The Commission should maintain its primary role in the codification and progressive development of international law. Another United Nations body, UNCITRAL, was responsible for international trade law, and the division of labour between the Commission and UNCITRAL was clear. There had, however, been instances in which, for reasons of a political or economic nature, the task of preparing articles on a specific subject-matter had been assigned to a body other than the Commission. It would therefore be fitting for the Commission to give careful consideration to the questions raised in the Working Group's report.

23. Mr. YANKOV, referring to comments made on paragraph 5 of the report, said that that paragraph was largely based on General Assembly resolution 32/48 and merely reflected the decisions taken on the matter by the Sixth Committee. It would be a pity, therefore, to delete the paragraph.

24. Mr. FRANCIS supported the remarks made by Mr. Yankov. It had indeed been at Mr. Yankov's suggestion that the representative of Australia, who had originally suggested that the Secretariat should make an assessment of the treaty-making process, had agreed that the Secretariat should confine itself to preparing a factual report on the situation.

25. Mr. USHAKOV explained that his difficulties related to the wording of paragraph 5. He proposed that the words "it was understood that the Secretary-General's report is to be", in the first sentence, should be replaced by the words "in accordance with the relevant resolutions of the General Assembly, the Secretary-General's report would be". Moreover, the words "it was also understood that", at the begin-

¹ See *Official Records of the General Assembly, Thirty-second Session, Annexes*, agenda item 124, doc. A/32/363, paras. 4-6.

² See A/C.6/32/SR. 46, para. 32.

ning of the third sentence, should be deleted, for the content of the Secretary-General's report did not depend on the "understanding" of the Working Group. Those amendments would entail a consequential drafting change in paragraph 6, where the words "on the other hand" should be deleted.

26. Mr. QUENTIN-BAXTER (Chairman of the Working Group) said that the Working Group considered that, in order to take account of the comments made by members of the Commission, a number of amendments should be made to paragraphs 5, 6 and 7 of its report. He proposed that the words "it was understood that", in the first sentence of paragraph 5, should be replaced by the words "in accordance with General Assembly resolution 32/48,". As suggested by Mr. Ushakov, the words "it was also understood that" should be deleted from the third sentence of the same paragraph, and the phrase "on the other hand" should be deleted from the first sentence of paragraph 6. With regard to paragraph 7, he proposed that the first sentence should be amended to read:

"It would need to be stressed that the Commission's productive capacity depended primarily upon two factors: first, the work that the Commission could accomplish during a 12-week annual session, and the work that its members, particularly the Special Rapporteurs, could accomplish at other times of the year; and secondly, the analysis of materials, the selection of documentation, and the preparation of studies by the Codification Division of the Office of Legal Affairs in the field of work of the Commission on the various topics on its agenda, all of which requires a reasonable increase in the manpower and financial resources of the Division."

27. The CHAIRMAN said that, if there were no objections, he would take it that the Commission approved the amendments mentioned by the Chairman of the Working Group.

It was so agreed.

The report, as amended, was adopted.

The law of the non-navigational uses of international watercourses

[Item 5 of the agenda]

28. The CHAIRMAN invited the Special Rapporteur on the law of the non-navigational uses of international watercourses to make a statement on the topic.

29. Mr. SCHWEBEL (Special Rapporteur) said that, before informing members of recent or current United Nations activities relating to the non-navigational uses of international watercourses, he wished to draw attention to the fact that non-governmental organizations were also performing work relevant to the topic. For example, the Committee on International Water Resources Law of the International Law Association

was to submit to the Association's conference in Manila a report containing draft articles on the regulation of the flow of water of international watercourses.

30. Turning to the work of the United Nations, he recalled that the United Nations Water Conference had adopted, on 25 March 1977, the Mar del Plata Action Plan.³ Included in the plan had been a recommendation that the Commission should give a higher priority in its work programme to the codification of the law of the non-navigational uses of international watercourses and should co-ordinate its work with the activities of other international bodies dealing with the development of the international law of waters, with a view to the early conclusion of an international convention. Subsequently, the Economic and Social Council, in its resolution 2121 (LXIII), had drawn the attention of the Commission to that recommendation of the Conference. By its resolution 32/158 of 19 December 1977, the General Assembly had endorsed resolution 2121 (LXIII) of the Economic and Social Council and approved the Mar del Plata Action Plan. Furthermore, the United Nations Conference on Desertification, held in August and September 1977, had reiterated the request of the United Nations Water Conference concerning the work of the Commission on the law of the non-navigational uses of international watercourses. Finally, members would recall that, at the beginning of the current session (1474th meeting), they had received copies of the correspondence exchanged between the Executive Secretary of ESCAP and the Chairman of the Commission at its twenty-ninth session, in which the Executive Secretary had drawn attention to the opinion of ESCAP's Committee on Natural Resources that the Commission should expedite its work in regard to shared water resources, as recommended in the Mar del Plata Action Plan.

31. It went without saying that the Commission's programme of work had as its basic point of reference the resolution adopted each year by the General Assembly, on the recommendation of the Sixth Committee, relating to the report of the Commission. At the thirty-second session of the General Assembly, a number of representatives in the Sixth Committee had expressed support for the Commission's decision to continue its study of the law of the non-navigational uses of international watercourses. Certain representatives had expressed the hope that the topic might be taken up with some degree of priority. In its resolution 32/151, the General Assembly had recommended that the Commission should continue its work on the topic, but it had not assigned it any particular priority.

32. UNEP had established two groups of experts whose work might be considered to have a bearing on the topic. The Group of Experts on Environmental Law was currently concentrating on liability and

³ *Report of the United Nations Water Conference* (United Nations publication, Sales No. E.77.II.A.12), chap. I.

compensation for damage from marine pollution caused by off-shore mining. On its long-term agenda, however, there was an item of particular relevance to the Commission's work, namely, the item on the legal aspects of pollution of rivers and other inland waters. The future work of that Group thus merited monitoring. The work of the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States was also of interest. At its fifth session, that Working Group had adopted, subject to reservations and declarations, 15 draft principles of conduct in the sphere of the environment for the guidance of States in the conservation and harmonious utilization of natural resources shared by two or more States. The Commission would no doubt consider some of those draft principles in its future work on the topic.

33. In co-operation with the Office of Legal Affairs, the secretariats of certain United Nations bodies, programmes and regional economic commissions, as well as certain specialized agencies and other international organizations, had been requested to provide recent information and material relevant to the law of the non-navigational uses of international watercourses. He had recently conferred with Mr. Caponera, of FAO, who had had immense practical experience in legal problems of international watercourses. Mr. Caponera had given him much valuable material and had assured him that FAO would respond to the request made by the Office of Legal Affairs, *inter alia* by forwarding copies of an index prepared by FAO of all treaties dealing with international watercourses.

34. At its twenty-eight session, in 1976, the Commission had had before it replies from 21 governments to the questionnaire on the topic formulated by the Commission in 1974.⁴ By its resolution 31/97 of 15 December 1976, the General Assembly had urged Member States that had not yet done so to submit their replies to the Commission's questionnaire. Document A/CN.4/314, containing comments from a further four Member States, represented the response to that appeal. However, he wished to stress the importance of receiving as many replies as possible at an early date.

35. In conclusion, he hoped to be in a position to submit to the Commission in the not-too-distant future his first report on the law of the non-navigational uses of international watercourses, and looked forward to the Commission's renewed consideration of the topic.

36. The CHAIRMAN thanked the Special Rapporteur for his very useful statement on recent activities relating to the topic of the law of the non-navigational uses of international watercourses.

37. If there were no objections, he would take it that the Commission decided to take note with appreciation of the statement made by the Special Rapporteur, to express the view that the Special Rapporteur

should proceed with the preparation of his report on the topic, and to urge Member States that had not already done so to submit their replies to the Commission's questionnaire, in pursuance of General Assembly resolution 31/97.

It was so agreed.

Draft report of the Commission on the work of its thirtieth session (*continued*)

CHAPTER I. *Organization of the session* (A/CN.4/L.273)

Paragraph 1

38. Mr. SCHWEBEL suggested the insertion, in the first sentence, of the words "at its permanent seat" after the word "session", and the deletion, in the penultimate sentence, of the word "finally".

It was so agreed.

Paragraph 1, as amended, was approved.

Paragraphs 2-12

Paragraphs 2-12 were approved.

Paragraph 13

39. The CHAIRMAN said that the number of meetings held by the Commission and its organs would be inserted by the Secretariat.

Paragraph 13 was approved on that understanding.

Paragraph 14

40. The CHAIRMAN pointed out that, pursuant to the decision taken by the Commission at its 1525th meeting, the names of Mr. Tabibi and Mr. Dadzie should be inserted in the final sentence of the paragraph.

Paragraph 14 was approved.

Chapter I as a whole, as amended, was approved.

CHAPTER IV. *Succession of States in respect of matters other than treaties* (A/CN.4/L.276 and Corr.1)

A. Introduction

Section A was approved.

B. Draft articles on succession of States in respect of matters other than treaties

TEXT OF ARTICLES 23-25, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTIETH SESSION

41. The CHAIRMAN drew attention to the correction in the text of article 23, paragraph 2, which was contained in document A/CN.4/L.276/Corr.1, paragraph 4.

Commentary to article 23 (Uniting of States)

Paragraph (1)

42. Mr. VEROSTA proposed the deletion of the word "hybrid", in the final sentence.

It was so agreed.

Paragraph (1), as amended, was approved.

⁴ See *Yearbook ... 1976*, vol. II (Part One), p. 150, doc. A/CN.4/204 and Add.1, para. 6.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were approved.

Paragraph (4)

43. Mr. VEROSTA suggested that the third and fourth sentences should be redrafted to make it clear that the practice in question had been instituted by the Kingdom of Sardinia and continued by the Kingdom of Italy upon the latter's succession to the Kingdom of Sardinia.

It was so agreed.

Paragraph (4) was approved on that understanding.

Paragraphs (5)-(12)

Paragraphs (5)-(12) were approved.

The commentary to article 23, as amended, was approved.

44. Mr. TSURUOKA requested that a reference be included in the report to the memorandum concerning article 23, paragraph 2, which he had submitted in document A/CN.4/L.282 and Corr.1.

45. The CHAIRMAN said that the Secretariat would comply with that request.

Commentary to article 24 (Separation of part or parts of the territory of a State) and article 25 (Dissolution of a State)

46. The CHAIRMAN drew attention to the correction to the texts of articles 24 and 25 (A/CN.4/L.276/Corr.1, para. 6).

Paragraphs (1)-(13)

Paragraphs (1)-(13) were approved.

Paragraph (14)

47. Mr. VEROSTA proposed the deletion of the words "the pretext for or", in the penultimate sentence. Moreover, he believed it would be more accurate to refer, in the same sentence, to "consular representation" rather than to "foreign representation".

48. The CHAIRMAN suggested that the Secretariat should be asked to check whether the reason for the dissolution of the Union of Norway and Sweden had been the one mentioned in the penultimate sentence and to make any necessary amendment thereto, the words "the pretext for or" being deleted in any case.

It was so agreed.

Paragraph (14) was approved on that understanding.

Paragraphs (15)-(28)

Paragraphs (15)-(28) were approved.

New paragraphs (28 a) and (28 b)

49. The CHAIRMAN drew attention to the new paragraphs (28 a) and (28 b) (A/CN.4/L.276/Corr.1, para. 9).

Paragraph (28 a) was approved.

50. Mr. USHAKOV suggested the addition at the end of paragraph (28 b) of the words "and that it should discuss that point at the second reading".

It was so agreed.

Paragraph (28 b), as amended, was approved.

Paragraph (29)

Paragraph (29) was approved.

The commentary to articles 24 and 25, as amended, was approved.

Section B as a whole, as amended, was approved.

Chapter IV as a whole, as amended, was approved.

The meeting rose at 1 p.m.

1527th MEETING

Thursday, 27 July 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Organization of future work (concluded)*

[Item 10 of the agenda]

REPORT OF THE WORKING GROUP ON INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW (A/CN.4/L.284 AND CORR.1)

1. Mr. QUENTIN-BAXTER (Chairman of the Working Group), introducing the report of the Working Group (A/CN.4/L.284 and Corr.1), said that the Group's basic aims had been to avoid suggesting premature conclusions and to stimulate reflection on a very new subject involving number of variables and unknowns. That explained the abstract title of the report and the avoidance, as far as possible, of the use in the report of catchwords such as "risk", "fault" and "ultra-hazardous acts", which would have conjured up a particular image in the mind of the reader. The topic discussed in the report was not one that had been treated in standard text books, and it was in many respects of remarkable contemporaneity. The Working Group therefore hoped that the reader would develop his ideas on the substance of the topic by reflection on the work of the United Nations Conference on the Environment and of the Third United Nations Conference on the Law of the Sea, particularly of the Third Committee of that Con-

* Resumed from the 1525th meeting.