Document:-
A/CN.4/SR.1527

Summary record of the 1527th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1978, vol. I

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.

ference, as well as on the efforts undertaken since the foundation of the United Nations to develop régimes for outer space activities and the peaceful uses of atomic energy, and also on the problems that might arise between neighbours in relation to the difficult subject of shared resources.

2. It might be wondered why the report made no direct reference to the 1948 Warsaw Convention.[1] The reason was that the object of that Convention had not been to explore the limits of the liability of the States of registration of aircraft for accidents to those aircraft, but rather to ensure that the application to aircraft of the local laws of the countries through which they passed would not unduly affect the normal conduct of civil air transport operations. On the other hand, the régime of the Warsaw Convention unquestionably fell within the general frame of reference of the topic under discussion, since it constituted an early method of limiting absolute liability for a particular form of activity that owed its origin to technological progress.

3. The reader might also wonder at what point the substance of the international law topic began to fade into the subject of "transnational law", or even into the realm of private international law, to become a question of unification of the rules of different systems of internal law. More fundamentally still, he might ask whether, in the distinction between the objectives of limiting liability, on the one hand, and establishing an absolute liability on the other, there was not a lesson to be learned about the limits of international obligations—in other words, about the distinction between "obligations", as that term was employed in the Commission's draft articles on State responsibility,[2] and the "liabilities" with which the topic under discussion was concerned. That might lead the reader to reflect on the very elusive line of distinction between acts which were wrongful in themselves and acts which, while not inherently wrongful, were non the less capable of establishing a liability.

4. In that connexion, the Working Group had thought it necessary to draw attention, in paragraph 8 of its report, to the speculation by some representatives in the Sixth Committee that there might be a category of acts that were not wrongful in the traditional sense of the term, but were not lawful either. The general opinion was that acts could be divided simply into those that were lawful and those that were not, but, as Mr. Ago had asked in his early reports on State responsibility, if the possibility were admitted of more than one régime of responsibility, was there any justification for saying that there were only two? Might there not be a third category of cases, as representatives in the Sixth Committee had suggested? Valuable information on that question might be drawn from Mr. Ago's latest report (A/CN.4/307 and Add.1 and 2).

5. He was very much aware that, in studying the topic under discussion, care must be taken not to stray into the area of prohibited acts. On the other hand, it must be recognized that a clear understanding of what categories of acts were prohibited by international law was essential before work on the new topic could begin. Questions such as whether and to what extent distinctive terminology should be employed for the new topic could be settled only at a later stage.

6. He had recently had occasion to study a report of the Governing Council of UNEP concerning the question of shared resources. It was apparent from that document that, while the representatives of States were desirous of reaching a wider understanding on the sharing of resources than currently existed, they found it necessary to enter reservations on behalf of their governments at every point. He believed that the essential reason for that position was that the topic of resource sharing, like the topic now before the Commission, was one in which there were as yet no fixed points of reference.

7. It was only natural that a State should be reluctant to give a categorical response to a proposal if it had good reason to fear that the context in which the proposal and the response were made would soon change, and that its response would then be given a meaning it had not intended. A government might be willing to declare that, in principle, it should not be injured, and that it was the government that permitted the danger to arise, or that created it, that should bear responsibility for injurious consequences arising out of an act not prohibited by international law. But when such consequences arose in practice, answers would have to be found to the questions as to what constituted harm, and in what circumstances actions by a State within its own territory, or in respect of matters over which it had jurisdiction and control outside its territory, could be considered harmful. Sometimes the answers would be obvious from the facts of the case; sometimes they might depend on agreed scientific standards, which might themselves be based on accepted suppositions; and sometimes, especially in matters relating to shared resources, there might be room for genuine disagreement as to whether the consequences of the activity were such that anyone had a right to complain of them. Similarly, while it might be supposed that, in principle, a government should be responsible for the consequences of the operation of ships flying its flag or of aircraft on its register, it was clear that in practice it had often been found more convenient and more equitable to attribute responsibility to the transport operator and to allow it to be litigated under the national law system that had jurisdiction.

[1] Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929 (League of Nations, *Treaty Series*, vol. CXXXVII, p. 11), and protocol to amend the Warsaw Convention, signed at The Hague on 28 September 1955 (United Nations, *Treaty Series*, vol. 478, p. 371).

[2] For the text of the articles adopted by the Commission up to 1977, see *Yearbook ... 1977*, vol. II (Part Two), pp. 9 *et seq.*, doc. A/32/10, sect. B, 1.

8. At the current stage there were no simple answers to many of the questions he had raised. Perhaps, therefore, the greatest justification for studying the topic under consideration would be that its systematic treatment might reveal some more fixed points of reference from which doctrine, practice and international agreement in individual sectors might grow. Clearly, however, if the Commission were to present materials on the topic that might enable governments to develop their own views, it would be necessary to rely more heavily than before on the records of contemporary activities within the United Nations and elsewhere. It was for that reason that the Working Group had emphasized the need for collection and analysis by the Codification Division of the wealth of relevant material that was flowing almost without interruption from organs of the United Nations and other international institutions. That work would be of value not only to the Special Rapporteur and the members of the Commission, for whom the indexes and papers on current practice, which were the normal tools of the international lawyer, would not suffice to keep them up to date on a subject of such vitality, but also to the members of the Sixth Committee, for the ramifications of the topic were such that no one could be expected to keep abreast of it without special assistance.

9. He was deeply grateful to all the members of the Working Group for the assistance they had given him in the preparation of the report and to the members of the Commission for having appointed him as Special Rapporteur for the topic.

10. The CHAIRMAN, speaking on behalf of the Commission, congratulated the members of the Working Group on their excellent report on a fascinating topic in which the General Assembly had shown very great interest.

11. Mr. AGO said he was convinced that the Chairman of the Working Group possessed the necessary qualities to bring the study of the topic that had been entrusted to him as Special Rapporteur to a successful conclusion. That topic, as the Working Group had pointed out in the introduction to its report, was closely linked to the topic of State responsibility. In both cases, the difficulties were largely due to the fact that, as a result of the progress of modern science and technology, the activities of States and individuals were continually extending to new areas and often had consequences that could not have been foreseen by those engaged in them.

12. Because of the fears aroused by the consequences of those activities, mankind might consider it necessary to prohibit certain activities, which seemed too dangerous, by adopting prohibitive primary rules whose breach would entail State responsibility for an internationally wrongful act. But where less danger was involved, it might authorize the activities and require States to assume responsibility for any dangerous consequences that might ensue. Thus in one and the same sphere there might be both prohibitions and authorizations, but accompanied by the obligation to make reparation for any damage.

13. The statement "a revolution in technology... has extended dramatically man's power to control his environment", in paragraph 10 of the Working Group's report, was somewhat infelicitous, since it would seem to imply that man controlled his environment, whereas it was intended to convey precisely the opposite idea. Nevertheless, he unreservedly endorsed the approach adopted by the Special Rapporteur and his conclusions.

14. The course the Special Rapporteur was taking was beset with obstacles, for the subject was difficult to master and expanded as it was studied. The object in view must therefore be precisely defined. It was certainly not the Commission's task to establish specific rules of conduct for particular activities; that was not the object of codification, but of the special agreements that would be adopted on the various subjects. The Commission's real task was to ascertain whether it was possible to establish some general rules on the basis of an analysis of the special rules adopted in particular areas. It was thus the inductive method that must be used, for the new topic perhaps more than for any other. The Commission would have to study an enormous mass of documents—treaties, agreements, internal laws—in order to extract what might appear to be little, but would in fact be much.

15. In conclusion, he expressed his best wishes to the Special Rapporteur for success in the work he was undertaking.

16. Mr. PINTO fully endorsed both the report submitted by the Working Group and the choice of Mr. Quentin-Baxter as Special Rapporteur for the topic.

17. Points to which Mr. Quentin-Baxter might wish to give attention in his work included paragraph 14 of General Assembly resolution 2749 (XXV), the substance of which had been incorporated in the informal composite negotiating text of the Third United Nations Conference on the Law of the Sea.[3] That paragraph referred to "activities in the area", meaning all activities of exploration for, and exploitation, of, the resources of the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, and stated, in particular, that "damage caused by such activities shall entail liability".

18. In considering environmental damage in general, the Special Rapporteur might wish to consider not only the problem of responsibility arising from activities that were in themselves particularly likely to be harmful, but also responsibility in connexion with activities in areas such as the Arctic and the Antarctic, which, because of their particular nature, were especially vulnerable. Finally, in his search for the foundations of liability, the Special Rapporteur might like to bear in mind the Roman law concept of liability *quasi ex contractu*.

[3] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

19. Mr. YANKOV supported the Working Group's conclusion that the topic discussed in its report was suitable for codification and progressive development, and the choice of Mr. Quentin-Baxter as Special Rapporteur. He also agreed with the general suggestions made in the report concerning the conduct of the study.

20. As one who had been associated for 10 years, through his connexions with the United Nations Conference on the Law of the Sea, with questions relating to the protection and preservation of the marine environment, he was well aware of the magnitude and complexity of the problems involved in assessing liability for the new forms of massive damage to the environment introduced by the technological revolution. He believed that the Commission would render the greatest service to the international legal order if it made the object of its work on the new topic prevention rather than punishment.

21. It was also important to maintain a clear distinction between the topic of State responsibility and the new topic under consideration. Reference should therefore be made to the work already done by Mr. Ago, with whose suggestion that the rules on liability for the consequences of acts not prohibited by law should be general, rather than special, he fully agreed. He also agreed with Mr. Quentin-Baxter that the new topic should be approached with caution and that the collection of materials would entail more work than usual, owing to the need to consult not only international agreements, but also the records and other documents of numerous bodies, including the Maritime Safety Committee of IMCO.

22. Mr. USHAKOV congratulated the Working Group on its excellent report, the conclusions of which he willingly accepted. He considered, however, that it was necessary to protect not only the environment, but also the legitimate rights and interests of States. Although man had only recently become aware of the deterioration of his enivronment, that deterioration itself was not a new phenomenon attributable solely to modern industrial activities, but one of long standing to which agricultural activities had largely contributed over the centuries.

23. Lastly, he noted that the report did not refer to the legal bases for the study, although rules of customary law existed on which the study should be based.

24. Mr. SCHWEBEL congratulated the Working Group on its excellent report and warmly supported the appointment of Mr. Quentin-Baxter as Special Rapporteur for the new topic. As Special Rapporteur for the law of the non-navigational uses of international watercourses, he had been pleased to note the reference in the report to the relevance of that topic to the study of liability, and he looked forward to a cross-fertilization of ideas between himself and Mr. Quentin-Baxter.

25. Mr. RIPHAGEN shared the admiration that had been expressed for the Working Group's report. He also subscribed to Mr. Ago's comment on paragraph 10, for in his view the current situation would have been better described if the verb "diminished" had been used in place of "extended". In that connexion, he agreed with Mr. Yankov that there was a need for preventive rules. On the basis of his experience as chairman of an intergovernmental working group on shared resources, he was convinced that the new topic, unlike that of State responsibility, was not one whose various parts could be clearly divided. It would be meaningless to have rules without the corresponding institutional arrangements.

26. Mr. TABIBI expressed his full support for the recommendations of the Working Group and for the appointment of Mr. Quentin-Baxter as Special Rapporteur.

27. Mr. DÍAZ GONZÁLEZ strongly supported the recommendations of the Working Group. Not only was there a link between the new topic and that of State responsibility, but there was also an intimate connexion between the new study and that in progress on the law of the non-navigational uses of international watercourses. It was therefore very important that the Special Rapporteur should take account of the work in progress on those subjects. He should also bear in mind, as other speakers had already suggested, the proceedings of the Third United Nations Conference on the Law of the Sea and the immense and increasing amount of national legislation on environmental protection and on the regulation of the use of shared natural resources.

28. Mr. VEROSTA associated himself with the congratulations addressed to the Working Group. He wished to point out, however, that customary rules probably existed already, and that an analysis of State practice would make it possible to determine them.

29. Mr. SUCHARITKUL was wholeheartedly in favour of the contents of the Working Group's report, including its recommendations. The study to be undertaken might be of particular value to developing countries, which were often unaware of, and therefore had inadequate legislation to combat, the risks of pollution associated with the foreign technologies or industries that their economic situation obliged them to import.

30. Mr. QUENTIN-BAXTER said that, in his capacity as Special Rapporteur, he was most grateful to all the members of the Commission who had spoken for their very helpful and inspiring comments. He was particularly indebted to Mr. Ago, who had long ago foreseen the guidelines for the study of the new topic and who had been the prime instigator of his own interest in it. He was extremely conscious of the importance of trying to elaborate general rules and of the relevance to his future work of the other points raised by members, whose collective knowledge would clearly be of great benefit to him.

31. The CHAIRMAN said that, if there were no objections, he would take it that the Commission approved the report of the Working Group and the recommendations it contained.

It was so agreed.

REPORT OF THE WORKING GROUP ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY (A/CN.4/L.279) *(concluded)**

32. Mr. SUCHARITKUL (Chairman of the Working Group) said that he had discussed with Mr. Ushakov the question of the revision of parts of the Working Group's report (A/CN.4/L.279). As a result of those discussions, he wished to suggest changes to paragraphs 22, 24, 25, 26, 27, 28 and 29.

33. In paragraph 22, the words "immunities from arrest, search, service of writs, detentions" should be deleted. The texts of paragraphs 24 and 25 should be replaced by the following new texts:

"24. State immunities are enjoyed by States themselves. State organs, instrumentalities, agencies and institutions which exercise the sovereign authority of the State are also entitled to State immunities. The expanding list of beneficiaries of State immunities and the ever-widening application of such immunities deserve a thorough and careful examination. In particular, an inquiry should be made as to what constitutes a 'foreign State' for the purpose of immunities. This inquiry will entail the study of the types of organs, agencies, instrumentalities and institutions which, forming part of the machineries of the State, participate in the enjoyment of State immunities. The beneficiaries of some State immunities certainly include the armed forces of States, or conversely 'foreign visiting forces' and all the men and equipment, such as members of the armed forces, men-of-war, military vehicles and military aircraft. The status of political subdivisions of States and the position of constituent members of a federal union also merit special treatment.

"25. The benefits of the rules of State immunities are also extended to other manifestations of State authority, which have no legal personality, or more accurately, in the form of things or property."

The last sentence of paragraph 26 should be replaced by the following new sentence: "However, this doctrine, which has been styled 'absolute' or 'unqualified' immunity, has not been followed with consistency in the practice of States." The texts of paragraphs 27, 28 and 29 should be replaced by the following new texts:

"27. A glance at the more recent practice of States and contemporary legal opinions will clearly show that immunity has not been accorded in all cases, and that several limitations have been recognized, with the result that in several categories of cases immunity has been denied. Theories have been advanced advocating limitations of the domain of State immunities. These theories, which have sometimes been styled 'restrictive', appear to be gaining further ground in State practice.

"28. The current trends in the practice of States and opinion of jurists deserve further and closer examination to indicate more clearly the direction in which State practice is developing. Neither State practice nor the *opinio doctorum* can now be said to have been fully orchestrated to the 'restrictive' tune, since the bases for measuring the quantum of immunities to be accorded to foreign States are far from uniform or generally consistent.

"29. The time has come for a careful study to be made in an effort to codify or progressively develop rules of international law on State immunities to define or assess with greater precision the amount or quantum of State immunities or the extent to which immunities should be granted. A working distinction may eventually have to be drawn between activities of States performed in the exercise of sovereign authority which are covered by immunities, and other activities in which States, like individuals, are engaged in an increasing manner and often in direct competition with private sectors. It is sometimes said that the current practice seems to indicate that immunities are accorded only in respect of activities which are public in character, official in purpose or sovereign in nature. In other words, only *acta jure imperii* or acts of sovereign authority as distinct from *acta jure gestionis* or *jure negotii* are covered by State immunities. This indication should also be further examined with the greatest care and scrutiny."

34. As a result of those changes, the report was no more than exploratory; it was less conclusive, a great deal more restrained and more precise, and the use of internal law terminology had been avoided.

35. He proposed that section III, which would appear as a revised version with the changes proposed, should be included in the part of the Commission's report dealing with the topic.

36. Mr. SCHWEBEL doubted the utility of making changes in the excellent report submitted by the Working Group. In the first place, it was a report of the Working Group, of which the Commission had merely taken note; it was not a report attributed to the Commission as a whole. There seemed little purpose, therefore, in seeking to negotiate changes. Secondly, he had some substantive doubts about passages remaining in the report, even with the improvements that had just been read out. He was not sure, for example, that, as was stated in the third sentence of the new text for paragraph 24, the application of immunities was "ever-widening". It was his impression that over the past few decades the application of immunities had been narrowing, and that the practice in favour of restricted application of immunities, which had begun in such countries as Belgium, had spread to an increasing number of States. It was true that more and more State entities were operating in spheres that had formerly been private and that the question of the application of immunities might therefore arise more frequently. But whether immunities were in fact applied more frequently was uncertain.

37. He was in favour of endeavouring to obtain the

* Resumed from the 1524th meeting, paras. 7-49.

maximum support of the Commisson for all spheres of the Commission's work, but he wondered whether the appropriate time to do that might not be at a later stage, when the responsibility of the Commission as a whole was engaged, not when the Commission was simply taking note of a report of one of its Working Groups.

38. Mr. VEROSTA said that the Commission was faced with a very peculiar situation, since it had already, at its 1524th meeting, approved the report. It was true that two or three members had expressed certain doubts, but it seemed too late to amend the report at that stage of the Commission's work.

39. He appealed to Mr. Sucharitkul to agree that discussion of the new proposals should be deferred until the next session.

40. Mr. SUCHARITKUL said that no new proposals had been made. The only effect of the proposed changes would be to eliminate parts of the report that might give rise to certain doubts. Controversies existed, but no solutions had yet been proposed. He hoped that the Commission would allow the Working Group to revise the report in such a way as to respond to the wider needs of the Commission.

41. The CHAIRMAN emphasized that the report was the responsibility of the Working Group. The Commission had approved the Working Group's conclusions, but that did not mean that it subscribed to everything in the report, even if it were to be attached to the Commission's report as an annex.

42. Mr. VEROSTA said that he would have no objection to the suggested changes being annexed to the former report. In that way the Commission would have ample time to consider them carefully before its next session. The Commission as a whole had already approved the former report, and it should not now approve another report without scrutinizing it.

43. The CHAIRMAN suggested that the Commission should conclude its discussion of the matter.

It was so agreed.

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

CHAPTER III. *State responsibility* (A/CN.4/L.275 and Add.1-5)

A. Introduction (A/CN.4/L.275)

Section A was approved.

B. Draft articles on State responsibility (A/CN.4/L.275 and Add.1-5)

Paragraph 20

Paragraph 20 was approved.

1. TEXT OF ALL THE DRAFT ARTICLES ADOPTED SO FAR BY THE COMMISSION (A/CN.4/L.275)

44. The CHAIRMAN said that section B of chapter III had been drafted before the Commission had made changes in the text of certain articles and before it had adopted article 27. In subsection 1, therefore, the words "Moment and duration of the" should be inserted before the word "breach" in the titles of articles 24 and 25. In paragraph 3 of the French version of article 25, the words "de comportements" should be replaced by the words "d'actions ou omissions". In the French and Spanish versions of article 26, the last word of the title should be amended to read "donné" and "dado" respectively. Finally, article 27, as contained in document A/CN.4/L.271/Add.1,[4] should be added in all versions.

Subsection 1, as corrected and supplemented, was approved.

2. TEXT OF ARTICLES 23-27 OF THE DRAFT, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTIETH SESSION (A/CN.4/L.275/Add.1-5)

Commentary to article 23 (Breach of an international obligation to prevent a given event) (A/CN.4/L.275/Add.1)

The commentary to article 23 was approved.

Commentary to article 24 (Moment and duration of the breach of an international obligation by an act of the State not extending in time) (AC.4/L.275/Add.2)

The commentary to article 24 was approved.

Status of the diplomatic courier and of the diplomatic bag not accompanied by diplomatic courier (A/CN.4/L.285)

[Item 6 of the agenda]

45. The CHAIRMAN invited the Chairman of the Working Group on status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier to introduce the Group's report (A/CN.4/L.285).

46. Mr. EL-ERIAN (Chairman of the Working Group) said that the Group had held four meetings and considered three working papers. The first paper, prepared by the Secretariat, had contained a classification of the general views of Member States on the elaboration of a protocol on the subject, their proposals for such a protocol, and some practical measures proposed in the written comments submitted by Member States during 1976-1978 and in the observations made by their representatives in the Sixth Committee at the thirtieth and thirty-first session of the General Assembly. The paper had also reproduced, in a comparative table, the relevant provisions of the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1969 Covention on Special Missions, and the 1975 Vienna Convention on Representation of States in their Relations with International Organizations of a Universal Character.

[4] Reproduced in the summary record of the 1524th meeting, para. 2.

47. The second working paper had contained his suggestions for an outline of relevant issues, based on the comments and proposals in the first working paper.

48. The third paper, prepared by the Secretariat at the Group's request, had set out the provisions of the four conventions reproduced in the first working paper and had classified them under each of the headings contained in the second paper.

49. The Working Group had agreed that there had been considerable developments in various aspects of the question in recent years and that the provisions of the conventions reproduced in the first working paper should form the basis for any further study of the question. The Group had tentatively identified 19 issues and had examined each of them in order to ascertain whether any of the four conventions adequately covered the issue concerned and what further elements could be considered as appropriately falling within each issue. Although most of the issues identified had been taken into account in the existing conventions, the Group had added others—for example, the multiple appointment of the diplomatic courier and the nationality of the diplomatic courier—on which the conventions were silent.

50. The CHAIRMAN noted that the Working Group had recommended that the Commission should include paragraphs 1-8 of the Group's report in its report to the General Assembly on the work of its current session. If there were no objections, he would take it that such was the Commission's decision.

It was so agreed.

The meeting rose at 1.05 p.m.

1528th MEETING

Thursday, 27 July 1978, at 4.10 p.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.

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

CHAPTER II. ***The most-favoured-nation clause*** (A/CN.4/L.274 and Add.1-6)

A. Introduction (A/CN.4/L.274)

1. SUMMARY OF THE COMMISSION'S PROCEEDINGS

Subsection 1 was approved.

2. THE MOST-FAVOURED-NATION CLAUSE AND THE PRINCIPLE OF NON-DISCRIMINATION

Subsection 2 was approved.

3. THE MOST-FAVOURED-NATION CLAUSE AND THE DIFFERENT LEVELS OF ECONOMIC DEVELOPMENT

Paragraphs 37-40

Paragraphs 37-40 were approved.

Paragraph 41

1. Mr. SCHWEBEL suggested that the word "if", in the second sentence, should be replaced by the word "as", and the comma deleted.

It was so agreed.

Paragraph 41, as amended, was approved.

Subsection 3, as amended, was approved.

4. THE MOST-FAVOURED-NATION CLAUSE IN RELATION TO CUSTOMS UNIONS AND SIMILAR ASSOCIATIONS OF STATES

Paragraphs 42 and 43

Paragraphs 42 and 43 were approved.

Paragraph 44

2. Mr. SCHWEBEL proposed the deletion, from the second sentence, of the words "of a political nature and that it will have".

It was so agreed.

3. Mr. RIPHAGEN suggested that some reference should be made to the fact that the Commission had had insufficient time to study the matter thoroughly.

It was so agreed.

Paragraph 44, as amended, was approved.

Subsection 4, as amended, was approved.

5. THE GENERAL CHARACTER OF THE DRAFT ARTICLES

Paragraphs 45-54

Paragraphs 45-54 were approved.

Paragraph 55

4. Mr. SCHWEBEL suggested that the insertion, at the beginning of the paragraph, of the words "while this proposal attracted some support" would better reflect the Commission's discussion of the point in question.

It was so agreed.

Paragraph 55, as amended, was approved.

Paragraphs 56-58

Paragraphs 56-58 were approved.

Subsection 5, as amended, was approved.

Section A, as amended, was approved.

B. Recommendation of the Commission (A/CN.4/L.274)

Section B was approved.