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Summary record of the 1530th meeting

Topic:
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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE THIRTY-FIRST SESSION

Held at Geneva from 14 May to 3 August 1979

1530th MEETING

Monday, 14 May 1979, at 3.20 p.m.

Acting Chairman: Mr. Erik SUY
(Under-Secretary-General
for Legal Affairs)

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Opening of the session

1. The ACTING CHAIRMAN declared open the thirty-first session of the International Law Commission.

Statement by the Acting Chairman

2. The ACTING CHAIRMAN said that his first happy duty was to say how pleased he had been to learn that the outgoing Chairman, Mr. Sette Câmara, and two other members of the Commission, Mr. Ago and Mr. El-Erian, had been elected by the Security Council and the General Assembly to the highest judicial office in existence—that of Judge of the International Court of Justice—and to note that once again the Council and the Assembly had chosen judges of the Court from among the Commission's members. On behalf of the Commission he renewed to Mr. Ago, Mr. El-Erian and Mr. Sette Câmara his congratulations on their election and his best wishes for success in the performance of their new functions.

3. As a consequence of the departure of those members, vacancies had arisen in the Commission which it would not be easy to fill, but he was convinced that the Commission would be able to discharge this delicate task in its awareness of the overriding interests of the process of codification and progressive development of international law, in order that it might continue to be the codifying body in the service of the international community.

4. At the opening of the Commission's thirty-first session, which ushered in the fourth decade of its exis-

tence, he stressed that the Commission's achievements in the course of the preceding 30 years had been one of the most important factors in the process of the elaboration of modern international law in the United Nations, as was shown by the positive and lasting influence exerted by the United Nations in laying the legal foundations for peaceful coexistence and co-operation among States in accordance with the purposes and principles of the Charter. The Commission's prudent and painstaking work, supported by a patient, conscientious and balanced study of precedent, jurisprudence and doctrine, had culminated in the preparation of international instruments which, far from being scholastic exercises, were the very basis and starting point for modern international treaty law and would always remain useful and of practical value to States.

5. Since the previous session the adoption of the Vienna Convention on Succession of States in Respect of Treaties by the Plenipotentiary Conference convened for that purpose by the General Assembly had represented an important event in the progressive development and codification of international law and had provided further proof—if proof were needed—of the excellent methods laid down by the General Assembly, on the basis of the Commission's Statute, for the purpose of the efficient performance of its tasks under Article 13, paragraph 1 (a) of the United Nations Charter. Even more perhaps than in the case of earlier codification conferences, the basic draft prepared by the Commission had made it possible for States to codify at Vienna by a unanimous vote—with the abstention of only two States in the final vote—the entire body of rules governing the subject.

6. The Commission, which played a decisive part in the process of the codification and progressive development of modern international law and which was the sole standing body of the United Nations expressly responsible for making proposals in that respect, would probably enter a new phase of activities in the course of which, thanks to its acknowledged authority and in the light of the international community's current needs, it would be expected to deal with questions of ever increasing complexity and to take account of the growing importance of the generally recognized principles of international law.

7. In its resolution 2501 (XXIV) the General Assembly had emphasized the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and

to give increased importance to its role in relations among nations.

8. For very diverse reasons, States were seeking more and more, both inside and outside the United Nations, to codify, develop and strengthen international law; beyond any doubt, the fundamental reason was the connexion between the maintenance of international peace and security and the development of international co-operation in all fields, on the one hand, and the strengthening of international law, on the other. For there was a direct and basic link between the effective application of a system of international legal rules concerning the conduct of States and the codification and development of international law.

9. However, the process of codification, and in particular the progressive development of international law, was also a means of adjusting the evolution of international law to changing needs. Since the beginning of the century, the earlier political, social and economic structures had been manifestly and profoundly transformed by the emergence of States with new social and economic systems and of an impressive number of newly independent States, as well as by the important role of the various legal systems that had been superimposed on the classical systems in the formation of international law. Accordingly, the current process of codification of international law had had to take account of the need for a progressive development in order that the codified rules should reflect to the fullest possible extent the new structures of the international community. Only by making the fullest allowance for the needs and aspirations of the existing community of nations had the process of codification been able to render the principles and rules of international law more effective in international relations.

10. The reason why the Commission had successfully accomplished its task in the past 30 years was that it had invariably regarded the codification and progressive development of international law as both a stabilizing and an innovating element. At a time when the General Assembly was about to deal with new topics like the item entitled "Consolidation and progressive development of the principles and norms of international economic law relating in particular to the legal aspects of the new international economic order", which was one of the items on the provisional agenda of the thirty-fourth session, the Commission in continuing to perform its function should at all times bear in mind the growing importance of the process of the constant adaptation of international law and the needs of its progressive development.

11. In that connexion he stressed the importance of the relationship between the General Assembly—the political and diplomatic executive and co-ordinating body—and the Commission as the learned body responsible for preparing basic drafts on various selected topics of international law. From that point of view, he considered that the Commission's achievements in recent years had strengthened the relationship of trust by which it was bound to the General Assembly. Accordingly, he congratulated the Commis-

sion not only on the quality and volume of the work it had carried out so far but also because it had never forgotten that the progressive development and the codification of international law should proceed with due regard to the reality of inter-State relations, including those within the United Nations. The general satisfaction with which the Commission's report on its thirtieth session had been welcomed by the General Assembly demonstrated that, as in the past, the Commission was continuing to produce work that was both excellent and viable.

Election of officers

12. The ACTING CHAIRMAN invited nominations for the office of Chairman.

13. Mr. TSURUOKA nominated Mr. Šahović, whom he described as both a scholar and a skilful diplomat and as particularly qualified for the office of Chairman on account of his sense of justice and his kindness coupled with efficiency.

14. Mr. USHAKOV, Mr. REUTER, Mr. THIAM, Sir Francis VALLAT, Mr. JAGOTA and Mr. TABIBI seconded the nomination.

Mr. Šahović was unanimously elected Chairman and took the Chair.

15. The CHAIRMAN thanked the Commission for having elected him to the Chair and said that he would endeavour to show himself worthy of the trust the members had placed in him.

16. The Commission's previous session had been chaired by Mr. Sette Câmara, to whom he addressed congratulations on his election to the International Court of Justice. In addition, and together with a large number of the Commission's members, Mr. Sette Câmara had represented the Commission at the General Assembly with great distinction; in its resolution 33/139, the Assembly had expressed its appreciation of the work accomplished by the Commission in 1978. The recommendations made in that resolution were in keeping with the Commission's own intentions.

17. In consequence of the election of Mr. Ago, Mr. El-Erian and Mr. Sette Câmara to the International Court of Justice—and the Chairman wished them the fullest success in that new office—the Commission was in a delicate position. The vacancies that had arisen would have to be filled and new special rapporteurs would have to be appointed. He was sure, however, that, as on so many occasions in the past, the Commission would speedily meet the requirements of the situation.

18. Lastly, he wished to refer to the adoption, on 23 August 1978, of the Vienna Convention on Succession of States in Respect of Treaties, and to express special thanks to the two Special Rapporteurs, Sir Humphrey Waldock and Sir Francis Vallat, whose devoted work had thus been crowned with success.

19. He invited nominations for the office of first Vice-Chairman.

20. Mr. TABIBI nominated Mr. Pinto.
21. Mr. TSURUOKA and Mr. JAGOTA seconded the nomination.
Mr. Pinto was unanimously elected first Vice-Chairman.
22. Mr. PINTO thanked the members of the Commission.
23. The CHAIRMAN invited nominations for the office of second Vice-Chairman.
24. Mr. FRANCIS nominated Mr. Díaz González.
25. Mr. REUTER and Mr. TSURUOKA seconded the nomination.
Mr. Díaz González was unanimously elected second Vice-Chairman.
26. Mr. DÍAZ GONZÁLEZ thanked the members of the Commission.
27. The CHAIRMAN invited nominations for the office of Chairman of the Drafting Committee.
28. Sir Francis VALLAT nominated Mr. Riphagen.
29. Mr. REUTER seconded the nomination.
Mr. Riphagen was unanimously elected Chairman of the Drafting Committee.
30. Mr. RIPHAGEN thanked the members of the Commission.
31. The CHAIRMAN invited nominations for the office of Rapporteur.
32. Mr. THIAM nominated Mr. Dadzie.
33. Mr. SCHWEBEL, Mr. JAGOTA and Mr. USHAKOV seconded the nomination.
Mr. Dadzie was unanimously elected Rapporteur.

Adoption of the agenda (A/CN.4/316)

The provisional agenda (A/CN.4/316) was adopted unanimously.

The meeting rose at 5 p.m.

1531st MEETING

Tuesday, 15 May 1979, at 11.30 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Organization of work

1. The CHAIRMAN said that, in the absence of sufficient information about all the items on the agenda, the Enlarged Bureau was not yet in a position to recommend a general programme of work for the current session. The Bureau's only recommendation so far was that the Commission should first consider the topic "State responsibility". Since the election of Mr. Ago, Special Rapporteur on that topic, to the International Court of Justice at the thirty-third session of the General Assembly, a communication had been addressed to the President of the Court to inquire whether Mr. Ago would be able to introduce his eighth report, relating to the final articles of part I of the draft on State responsibility, and comment thereon in the Commission. By letter dated 12 March 1979, the contents of which had been brought to the attention of the Commission's members, the President of the Court had signified his consent, subject to certain conditions, in particular the condition that Mr. Ago would participate in the Commission's deliberations in his individual and personal capacity.

2. The Enlarged Bureau further recommended that the first three weeks of the session should be used for considering the relevant documents submitted by the Special Rapporteur and already circulated (A/CN.4/318 and Add.1-3) and that another addendum, to be circulated later, should be considered during one week early in July.

3. In the absence of objections, he would take it that the Commission agreed to accept those recommendations and to invite Mr. Ago to attend as from the next meeting to introduce and comment on his report.

It was so decided.

The meeting rose at 11.45 a.m.

1532nd MEETING

Wednesday, 16 May 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Also present: Mr. Ago.

Status of members of the Commission

1. Mr. SUY (Under-Secretary-General for Legal Affairs) recalled that at its previous session the Commission had expressed the wish that the Secretary-General