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Summary record of the 2304th meeting

Topic:
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could therefore be left, at least in the initial stages, to the operator himself. Similarly, while article 16 was reasonable in principle, the obligation to provide information periodically should rest with the operator. Protection of national security and industrial secrets, the subject of article 17, was a very necessary element in regulating the supply of information to other States. The article required careful drafting, however, in order to achieve a satisfactory balance of interests.

61. Articles 18 and 19 made an obvious point with respect to the granting of requests for consultation in connection with activities likely to cause transnational harm. A problem would arise, however, where one State considered that an activity was not likely to cause such harm while the other insisted on limiting the freedom of the citizens of another State to engage in activities beneficial to them. Even if the complainant State was not allowed a right of veto, as explained in the commentary to article VI, the obligation to consult would itself entail a duty to satisfy that State and to accept conditions which were perhaps so onerous that the activity itself would have to be abandoned. In such instances, one obvious solution would be to adopt some means for the peaceful settlement of disputes, such as recourse to neutral expert opinion. He was none the less doubtful about the value of such proposals, as well as about the list of factors the Special Rapporteur had suggested for incorporation in another article in a framework convention. He shared the Special Rapporteur’s misgivings on that score and would recommend that any articles on those subjects should be omitted at the present stage. The balance-of-interest factor was not peculiar to that particular field but lay at the heart of the operation of international law. He was also hesitant about entering into details of the kind proposed in article 20 bis and about the “polluter pays” principle. Such matters could be reviewed when more progress had been made on the basic concepts.

62. Lastly, he agreed that prevention could not be dealt with in the abstract and that different types of principles of prevention might be relevant to different types of activities. He also endorsed the view that the topic should not generate a new set of conditions for the transfer of the resources and technology which the developing countries required to sustain their development. Further effort should be devoted to clarifying the basic principles, although the drafting of the procedural principles could be left largely to States themselves.

Draft Code of Crimes against the Peace and Security of Mankind

63. Mr. KOROMA (Chairman, Working Group on a draft statute for an international criminal court) said that the Working Group had made considerable progress in the past two weeks. After examining and reaching a preliminary understanding on a series of draft provisions dealing with such general aspects of the matter as the status of the court, judges, the registrar and the composition of chambers, it had set up three subgroups to deal with jurisdiction and applicable law, with investigation and prosecution, and with cooperation and judicial assistance. The subgroups had produced detailed reports with specific draft provisions accompanied in some cases by notes or preliminary comments, which had then been discussed in the Working Group. The subgroups had subsequently resumed their work with a view to incorporating into the draft articles, in so far as possible, the observations made in the Working Group and to considering certain issues which had been identified as possible additional matters for a statute. It had been agreed that, after the subgroups had completed their work, the task would be undertaken of consolidating in a coherent whole the various provisions and commentaries from the Working Group and its subgroups.

64. He was confident that the Working Group would be able at the present session to place before the Commission a substantive piece of work that would put it on the road towards complying with the mandate entrusted to it by the General Assembly, namely, the drafting of a statute for an international criminal court.

The meeting rose at 1.10 p.m.

2304th MEETING

Tuesday, 8 June 1993, at 10.10 a.m.

Chairman: Mr. Gudmundur EIRIKSSON

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Fomba, Mr. Güney, Mr. Kabatsi, Mr. Koroma, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Chivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Robinson, Mr. Rosenstock, Mr. Shi, Mr. Thiam, Mr. Tomuschat, Mr. Vereshchetin, Mr. Villagráñ Kramer, Mr. Yankov.

[Ninth report of the special rapporteur (continued)]

1. The CHAIRMAN invited the members of the Commission to continue the consideration of the ninth report of the Special Rapporteur (A/CN.4/450). He said that Mr. Yamada, who was unable to be present at the meeting, had requested that the text of his statement should be distributed to the members of the Commission.

2. Mr. THIAM said that the Commission, which had already considered the question in its many aspects and had decided in accordance with the General Assembly's instructions to confine its consideration of the topic to issues of prevention in respect of activities involving risk, should conclude the general debate and move on to the practical stage of the work with which it was entrusted, namely, the draft articles on prevention. He thanked the Special Rapporteur for his patience and suggested that the new articles proposed in the ninth report should be referred to the Drafting Committee.

3. Mr. MIKULKA said that he associated himself with the thanks addressed to the Special Rapporteur, who had acquitted himself faithfully of a task made more difficult by the fact that the Commission was still not about to reach consensus on the precise scope and content of the topic. It had nevertheless taken an important step forward in 1992 when it had decided to deal henceforth only with prevention in respect of activities involving risk and to leave aside activities with harmful effects—a reasonable decision, since, as Mr. Pellet had pointed out (2302nd meeting), it was in the case of activities involving risk that the concept of prevention became meaningful. The decision did not mean that the Commission had abandoned the idea of devising a set of rules on corrective measures to be taken in the event of transboundary harm and of then considering the question of liability because, as Mr. Koroma had said (2303rd meeting), risk did not in itself give rise to liability. He therefore endorsed the Commission's method of work, which was to tackle problems one by one.

4. With regard to the articles on preventive measures proposed by the Special Rapporteur, he said that the purpose of such measures was to minimize the probability of an accident occurring as a result of activities carried out under the jurisdiction and control of States, and not to avoid the occurrence of harm. However, he did not think it necessary, at the present stage, to answer the question of whether the liability of a State which had fulfilled its obligations of supervision and prevention could be incurred or not, as did the Special Rapporteur. That question, which was at the heart of the second part of the topic, could be decided only after an in-depth study by the Commission.

5. It was clear from the ninth report, as well as from the eighth report, that the Special Rapporteur endorsed the view that the legitimacy of all measures defined in the framework of the topic, including preventive measures, was based on the fact that every State was prohibited from using its territory for purposes contrary to the rights of other States. That hypothesis might, however, be a source of misunderstanding, since any activity capable of causing harm to another State could be regarded as an unlawful activity and it could then be asked whether what was involved was not State responsibility for wrongful acts.

6. Article 11 (Prior authorization), proposed by the Special Rapporteur, gave rise to two problems. The first related to the definition of the concept of risk. Only in the light of that definition could it be said whether States could reasonably be expected to accept prior authorization as a general obligation. The second problem related to the periodic renewal of the authorization or the possibility, or even the obligation, to withdraw it in certain cases, which was not expressly provided for anywhere. Article 12 (Transboundary impact assessment) was drafted in a very general way. Logically, the authorization referred to in article 11 should be refused if the results of the assessment were not satisfactory, but the proposed text did not say so. Furthermore, article 15 (Notification and information) gave the impression that, even if the assessment required under article 12 showed a possibility of substantial transboundary harm, the State could nevertheless give its authorization within the meaning of article 11. But why, in that case, should it be required to notify the other States of the results of the assessment?

7. Article 13 (Pre-existing activities) was somewhat confused. It seemed to indicate that, although activities undertaken without the authorization of the State might continue to be carried out, the State was liable for any harm caused. Perhaps it might be stated that the continued exercise of such activity was without prejudice to the question of State responsibility. Article 14 (Performance of activities) dealt with two different issues which deserved to be treated separately: the use of the best available technology to minimize the risk and the use of compulsory insurance.

8. In connection with notification and information, the Special Rapporteur raised the question of establishing special regimes, perhaps in the form of a convention governing everything relating to the activity in question. In view of that possibility, it was difficult to understand why, according to article 18 (Prior consultation), the States concerned should enter into consultations with a view to finding mutually acceptable solutions for any issue of concern in connection with the activity in question, “on the understanding that in all cases liability for any transboundary harm it might cause will be subject to the provisions of the corresponding articles of this instrument”. If the articles under consideration were one day to become a framework agreement, it would, in his view, be quite logical to leave States the possibility of establishing special regimes including the strict liability...
regime, to regulate in detail the questions dealt with by the framework agreement. It should always be possible to waive the rules of the framework agreement, even in respect of liability.

9. In conclusion, he said that he was prepared to support Mr. Bowett’s proposal (2303rd meeting) on the procedure to be followed in connection with the new articles and the articles already referred to the Drafting Committee.

10. Mr. RAZAFINDRALAMBO said that, in accordance with the decision taken by the Commission at its forty-fourth session, the Special Rapporteur had focused his ninth report on prevention in respect of activities involving risk and had thus had to reconsider the whole set of draft articles relating to prevention which he had submitted in his eighth report, without, however, casting doubt on the legal basis for prevention, a question which the Commission had considered in detail at its forty-fourth session. Reopening the discussion on that issue was therefore not necessary, and it would be better, as Mr. Thiam had suggested, immediately to refer the new articles to the Drafting Committee. In his ninth report, however, the Special Rapporteur had not confined himself to revising the earlier draft articles, but had included in them the results of the study he had carried out in the light of the comments made by the members of the Commission and of instruments recently adopted in the environmental field. The Special Rapporteur should be congratulated on his efforts, which had finally succeeded in dispelling the doubts of those who had not been convinced of the viability of a general instrument on the strict liability of States for the consequences of lawful activities.

11. Turning to the draft articles themselves, he noted with regard to article 13, which extended the scope of international liability to pre-existing activities, that such activities could continue for several years without ever causing harm, and that presupposed that they had not involved any significant risk at the outset. To make such activities subject to the requirements envisaged might therefore create difficulties in the relationship between the State and the operators, since the new demands of the State with respect to prevention could be regarded as a departure from the initial undertakings or as a modification, implied or otherwise, of the investment contract and the specifications. There was also the fear that, under cover of article 19, the State presumed to be affected would interfere in the economic and industrial policy of the State of origin and cause that State material harm, particularly if its initiative resulted in the activity in question being suspended. In his view, it would therefore be preferable, in the case of pre-existing activities, to confine the application of measures of prevention to activities having harmful effects or at least to potentially dangerous activities such as nuclear or chemical plants, a list of which could be incorporated in an annex, as Mr. Tomuschat had suggested (2302nd meeting).

12. Article 15 raised the problem of the situation of the developing countries and the intervention of international organizations, a problem that could not be overemphasized. The Special Rapporteur had already displayed particular concern with respect to the developing countries, in accordance with a general trend in the progressive development of international law. Certainly, special treatment should be accorded to the developing countries so far as the assessment of transboundary effects and measures of notification and information were concerned and an assistance programme should be established to provide them with funds and technology. Such a programme and such treatment should be the subject of special provisions, similar to articles 202 and 203 of the United Nations Convention on the Law of the Sea. It should also be compulsory to take out insurance so as not to impose a financial burden on those States that would be beyond their means. In the case of activities carried out by private operators, the States should have residual liability in exceptional cases only, since the total amount of compensation should be covered by insurance. As to international organizations, their intervention in the field of prevention should be of a systematic nature, particularly in the case of the assessment of the transboundary effects of activities.

13. With regard to the settlement of disputes, it would be more sensible to devote a special section to the question which would provide for various methods of settlement and would be based on Part XV of the United Nations Convention on the Law of the Sea. If the dispute was simply a matter of a difference of view concerning the interpretation of texts or the technical assessment, however, the solution would perhaps be, as the Special Rapporteur proposed, to initiate an inquiry procedure, for instance, in the form of a commission of inquiry which would be responsible for giving an opinion. Lastly, in his view, it would be logical and normal to include in the draft articles the principles of the non-transference of risk or harm and the "polluter pays" principle, along with the other principles governing the topic.

14. Mr. AL-BAHARNA said he was not sure that the Special Rapporteur had chosen the best method when he had drawn, for his new draft articles, on the set of articles that had been placed in an annex, purged of any reference to activities having harmful effects. In that process, he had revived certain controversial issues that should be discussed before dealing with the wording of the proposed articles. First, with regard to the question whether the proposed articles would be of a binding nature, the Special Rapporteur stated that the discussion was "suspended for the time being", which was perhaps unfortunate, as the answer to that question would depend on the wording of the articles. It would be preferable for the Commission to proceed on the assumption that the articles would constitute a set of binding obligations, since, in the case of hazardous activities, prevention was better than cure and, consequently, the regime of prevention should be obligatory.

15. Secondly, the Special Rapporteur had apparently restricted the scope of obligations of prevention, since he stated that the aim of preventive measures was "to attempt to ensure that activities under the jurisdiction or control of a State are carried out in such a way as to minimize the probability of an accident occurring which would have transboundary effects" and had then added:

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4 Ibid., chap. II.

5 Ibid.
"We underscore 'to attempt' in order to show that the purpose of the obligation is not 'to prevent the occurrence of any harm' ... but to compel the adoption of particular measures in order to achieve the above-mentioned results". His own view was that, on the contrary, the object of the articles on prevention should be to act as a check on all activities likely to cause transboundary harm.

16. Thirdly, the apportionment of liability contemplated by the Special Rapporteur by which the State would not in principle be liable for private activities in respect of which it carried out its supervisory obligations, subject however to residual liability in some cases, appeared to him to be artificial, if not unworkable. Where liability was concerned, the possibility of action being taken against the State in whose territory an activity was carried out could not be excluded. The civil liability of the operator would by definition remain national unless it acquired an international dimension by virtue of the applicable principles of international law.

17. Fourthly, with regard to the possibility of differential treatment for the developing countries because they lacked the financial resources and technology required to monitor certain tasks, the problem was, of course, a real one but the Commission should find a way of resolving it without diluting the legal regime that was being constructed.

18. Turning to the draft articles proposed by the Special Rapporteur, he agreed with the principle whereby the State in whose territory activities involving a risk of transboundary harm were carried out should have a controlling function. He feared, however, that such detailed regulations as those laid down in articles 11 to 14 might ultimately mean that the legal regime of prevention would amount to interference in the domestic affairs of States. He would also like a clarification of the link between "prior authorization", under article 11, and "transboundary impact assessment", under article 12, which lay at the heart of the monitoring process.

19. With regard to articles 15 and 16, while he supported the principle of notification by the State of origin and the principle of exchange of information between the State of origin and States at risk, he considered that their wording should be re-examined with a view to taking account of the fact that the State of origin could not always determine in advance which States might be at risk. As to the intervention of international organizations, he shared the Special Rapporteur's misgivings and also did not see how any legal obligation could be imposed on them under an instrument to which they were not parties. It would be best to delete any reference to international organizations in article 15, subparagraph (b), and to add a subparagraph whereby the State of origin could request technical assistance from international organizations with regard to the prevention of transboundary hazards. Article 15, subparagraph (d), which referred to the participation of the public, should also be deleted, as it seemed to be very unrealistic.

20. He agreed on the whole with article 17, but considered that, to prevent States from using it as a means of evading the legal regime of prevention, the concepts of "national security" and "industrial secrets" should be narrowly defined and that the second part of the article should be strengthened so as to ensure a proper balance between the needs of security and the provision of information pertaining to transboundary hazards.

21. With regard to the principle of consultations, the importance of which was explained in the report, it was perhaps unwise to formulate it in such imperative terms as those of article 18. Furthermore, the last phrase, "on the understanding that in all cases liability for any transboundary harm it might cause will be subject to the provisions of the corresponding articles of this instrument", was unnecessary, since liability would in any event be governed by the applicable norms of international law. The wording of article 19 (Rights of the State presumed to be affected) was acceptable, save for the last sentence concerning payment of compensation for the cost of the study, which might impede the consultations. Consideration of the issue of the settlement of disputes, which was analysed in the commentary to article VIII, was a little premature, as recognized by the Special Rapporteur. A system of inquiry commissions could perhaps be considered, provided that the decisions of such commissions were recommendatory.

22. Lastly, he supported the Special Rapporteur's proposal to retain the text of article IX (Factors involved in a balance of interests) either in the form of an article or in an annex. He also supported the idea of including a provision on non-transference of risk or harm, along the lines of article 20 bis.

23. Mr. TOMUSCHAT said that he felt compelled to elaborate on three comments which he had already made (2302nd meeting) and which the Special Rapporteur had declined to take up. The first was that the scope of the draft articles ratione materiae was unclear. As Mr. Bowett had said (2303rd meeting), the Special Rapporteur's proposals were essentially directed towards establishing an environmental impact assessment system, which was certainly not suitable for all activities involving risk and would be relevant only with regard to planned works whose dimensions went beyond a certain threshold that must be carefully defined. It was significant in that regard that all existing instruments attempted to describe in precise detail the activities to which they applied. That had been done by the European Communities in Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment,6 which was supplemented by two lists of activities to be subjected to preventive procedures of assessment, and in the Convention on Environmental Impact Assessment in a Transboundary Context. The general concept of activities involving risk might well be suitable when liability for harm was being considered. Yet a procedure for assessment of environmental impact must be confined, on account of its very nature, to certain easily identifiable activities which, when carried out in isolation, involved a specific risk of transboundary harm. Global threats to the environment must be combated by other means. As Mr. Yamada had indicated in the text of his statement circulated at the start of the meeting, there would probably be a need to analyse and categorize the specificities of various existing and possible activities involving risk, so that the

draft articles might be fully adapted to the diversity of risks and activities and to the rapid progress of science and technology.

24. His second point was that the report did not provide enough information on recent developments. The Protocol on Environmental Protection to the Antarctic Treaty, for example, contained important provisions on environmental impact assessment and article 3 of the United Nations Framework Convention on Climate Change embodied the principle that a lack of full scientific certainty should not be used as a reason for postponing precautionary measures.

25. His third comment related to the possible impact of recent instruments on the topic. Taking the example of the Convention on Environmental Impact Assessment in a Transboundary Context, which was mentioned in the report, it could be asked whether it would not deprive the draft articles of some of their interest if the Commission decided to restrict their scope to environmental impact assessment.

26. In conclusion, he stressed that his comments had been made only for the purpose of helping the Special Rapporteur and the Commission move forward in their work and that he would not oppose the referral of the draft articles to the Drafting Committee or to a working group, if other members of the Commission so wished.

27. Mr. ROBINSON said the fact that the draft articles dealt with activities that involved a risk of transboundary harm but were lawful would influence the attitude of many States, particularly developing countries, which, on account of their lack of adequate resources and technology, might find the obligations imposed by the articles unduly onerous. Why should a developing country be obliged to ensure that a transboundary impact assessment was undertaken in respect of an activity taking place in its territory, to carry out consultations with potentially affected States and to design and implement preventive measures for activities that were inherently lawful and beneficial to its economy because they generated employment? The fact that the activities were often undertaken by transnational corporations over which the developing host country did not have sufficient effective control would not make it any easier for some of those countries to accept the obligations imposed by the articles. In another forum of the United Nations, developed States had staunchly resisted the adoption of a code of conduct for transnational corporations which would, inter alia, oblige such entities to conduct their activities in accordance with environmentally sound practices. It was good that the Special Rapporteur had exhibited a keen sense of the kind of problems which the implementation of the articles posed for developing countries and had promised to include, perhaps in the chapter on principles, a text that would address their concerns. It was to be hoped that the formulation of such a provision would not be unduly general and abstract.

28. Of course, the cost of a transboundary impact assessment and other costs related to the implementation of the articles would not necessarily have to be borne by the State in whose territory the activities were undertaken; those costs should fall to the State only when it was itself carrying out the activities. In other cases, the State should or could arrange for the costs to be defrayed by private operators. That analysis was borne out by article 12, in which the word "order" should be taken to mean that the State itself need not carry out the assessment or defray its costs.

29. Another important factor from the point of view of the State in whose territory the activities were carried out was that the highest obligation that the articles should impose on it was one of "due diligence", which was defined in the report as obligations deemed to be unfulfilled only where no reasonable effort is made to fulfil them. The essence of the State's obligation was thus to carry out its supervisory function by putting in place appropriate legislative, administrative and enforcement measures in respect of the activities being undertaken in its territory. It was, however, open to question whether the wording of article 14 sufficiently conveyed "due diligence" as distinct from an absolute obligation. If a State adopted the necessary legislative and administrative measures, which, if applied by the private operator, would minimize the risk of significant transboundary harm and reduce its probable scale or, in the event of accident, contain and minimize such harm, and, if the operator failed to comply with those measures, would the expression "ensure" that operators "take all necessary measures" mean that the State was in breach of the obligation imposed by the article? Surely the State should not be responsible in such cases and the wording of article 14 should be revised accordingly.

30. He also had some doubts about the practical application of the obligation provided for in article 13, subparagraph (d), to give the public liable to be affected information and to enable it to participate in the decision-making process. He was concerned both about the scope of the obligation to provide information, since it related not only to the public of the State of origin, but also to the public of the potentially affected State, and about the mechanism that would have to be devised to discharge the obligation to involve the public in the decision-making process.

31. He believed that a dispute settlement system established by the articles should have a technical inquiry commission as an essential component, but thought that the precise nature of the system should be decided on only when the whole set of draft articles had been finalized.

32. He had doubts about the relevance and utility of the concept of "balance of interests" and, consequently, about the list of factors contained in article 20.

33. Despite those reservations, he could agree that the draft articles should be referred to the Drafting Committee.

Cooperation with other bodies

[Agenda item 7]

STATEMENT BY THE OBSERVER FOR THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

34. The CHAIRMAN welcomed Mr. Njenga, who was attending the Commission's meeting in his capacity as...
Secretary-General of the Asian-African Legal Consultative Committee.

35. Mr. NJENGA (Observer for the Asian-African Legal Consultative Committee) said that his organization greatly valued its long-standing ties with the Commission. As its Secretary-General and a former member of the Commission, he was deeply committed to strengthening the bonds between the two bodies in the service of their mutual interest. At the thirty-second session of the Committee, held in Kampala, in early 1993, the Committee's outgoing Chairman, Mr. Tomuschat, had given a comprehensive and most informative account of the progress made by the Commission at its forty-third session. The Committee particularly appreciated that he had stressed the permanent and, on many questions, innovative role of the Committee in the codification and progressive development of international law, which was all the more striking in that it had extremely modest means compared to those available to the Commission.

36. The meticulous way in which the Commission dealt with matters of vital importance to the international community was universally acknowledged. All the items on its agenda were of special interest to the Committee, but three of them were of particular importance for the States of Asia and Africa: the draft Code of Crimes against the Peace and Security of Mankind; international liability for injurious consequences arising out of acts not prohibited by international law; and the law of the non-navigational uses of international watercourses. The last of those topics had also been on the Committee's work programme for some time and the Committee welcomed, as a sound basis for the future convention, the draft articles adopted by the Commission on first reading.8 The Committee, which hoped that the second reading of the draft articles would be completed as soon as possible, had prepared detailed comments on the topic, which might be of use to the Commission at the current stage. At its last session, the Committee had also requested its secretariat to examine other aspects of the question of river system agreements, with special emphasis on the utilization of freshwater resources.

37. Following the proclamation by the General Assembly of the United Nations Decade of International Law,9 the Committee's secretariat had prepared a paper for the twenty-ninth session of the Committee on its role in attaining the objectives of the Decade. The Committee had subsequently commissioned an in-depth study on the subject, dealing with all the objectives of the Decade, and had submitted it to the Legal Counsel of the United Nations. The Committee's secretariat had recently forwarded to the Office of the United Nations Legal Counsel a summary report of the Committee's activities which were aimed at achieving the objectives of the Decade in 1993 and 1994. The item would remain on the Committee's agenda in years to come, so that it could make its modest contribution to the Decade of International Law. In that context, the Committee was actively cooperating with the Government of Qatar in organizing a conference, to be held in Doha from 22 to 25 March 1994, on international legal issues relating to the environment, the United Nations Decade of International Law, the peaceful settlement of disputes, the law of the sea, the new international economic order and other topics. He invited all members of the Commission to attend the conference, in which the United Nations Secretary-General, various senior officials of the United Nations, several members of ICJ and distinguished international law experts and eminent academicians would take part.

38. The Committee, which had always attached great importance to the law of the sea, had examined at its thirty-second session a report on the work of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea. It had called on member States to give timely consideration to adopting a common policy and strategy for the period between the sixtieth ratification and the entry into force of the United Nations Convention on the Law of the Sea. It had also urged member States which had not yet done so to ratify the Convention. He had attended the meeting of the Preparatory Commission in Jamaica and the tenth session of the informal consultations, chaired by the United Nations Legal Counsel, at which considerable progress had been made.

39. Another area of activity that had taken on increased importance was that of environmental protection. During the past two years, the Committee's secretariat had actively participated in the preparatory and final phases of the United Nations Conference on Environment and Development, the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change and the Convention on Biological Diversity. The Committee's focus was currently on the evaluation of the implementation of Agenda 2110 and the follow-up of the two above-mentioned Conventions. In addition, the secretariat was monitoring the progress of negotiations on an international convention on combating desertification and, during the current year, in cooperation with UNEP, the Committee planned to convene an expert group meeting on the environment for in-depth consideration of environmental issues.

40. On the question of the status and treatment of refugees, the Committee's secretariat had prepared two papers for the thirty-second session of the Committee, one entitled "AALCC's Model Legislation on Refugees: A Preliminary Study" and the other, "Establishment of Safety Zones for the Displaced Person in the Country of Origin". Shortly thereafter, an informal meeting had been held in Addis Ababa with officials of OAU and UNHCR, at which it had been decided to convene a joint meeting of the three organizations. The tripartite meeting had been held on 3 June 1993 in Geneva and had been followed by a meeting of the "Reflection Group" on 4 and 5 June, which had considered two items, "temporary protection" and "protection in conflict". The Committee looked forward to strengthening its relations with UNHCR and OAU on the vital issue of refugees; other areas of mutual interest had also been identified.

41. Recognizing the importance of the relationship between economic development and the harmonization of

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9 General Assembly resolution 44/23.
legal regimes concerned with international trade through the sharing of accumulated experience among member States, the Committee had established a data collection unit at its headquarters in New Delhi. When the unit acquired sufficient expertise in collecting and analysing data, an autonomous centre would be established for research and development of legal regimes applicable to economic activities in developing countries. Having acquired the necessary hardware, the unit was in the process of preparing the software and had approached member States and the relevant international organizations for assistance in making data available to it.

42. The Committee’s programme included studies and papers on other subjects, such as the deportation of Palestinians as a violation of international law, particularly the 1949 Geneva Conventions; the criteria for distinguishing between international terrorism and national liberation movements; the extradition of fugitive offenders; the debt burden of developing countries; the Indian Ocean as a zone of peace; the legal framework for industrial joint ventures; legal issues involved in the privatization of State-owned enterprises; and international law matters. All those items would be considered at the thirty-third session of the Committee, to be held in Tokyo in 1994. On behalf of the Asian-African Legal Consultative Committee, he invited the Chairman of ILC to attend the session. In closing, he noted that, at its thirty-second session, held in Kampala, the Committee had taken a decision on the crucial question of the relocation of its headquarters from New Delhi to Doha, Qatar. He was confident that, in its new headquarters, to which it expected to move in 1994, the Committee would continue to assist the aspirations of its member States and contribute to the common endeavour of the promotion and progressive development of international law.

43. Mr. TOMUSCHAT said that, at the thirty-second session of the Asian-African Legal Consultative Committee, which he had attended as an observer of the Commission, he had been struck by the extraordinary efficiency with which the staff of the Committee’s secretariat, under Mr. Njenga’s guidance, had provided services for so many meetings, which had often continued late into the night, and by the warm and cordial welcome he had been given by all the participants. Clearly, the contacts between the Commission and the Committee were very enriching. As its resources were infinitely greater than those of the Committee, the Commission was in a position to delve deeper into most of the questions on its agenda, but none the less the Committee had reached remarkable results. Furthermore, it should not be overlooked that the Committee had a much wider scope of activity, not confining itself to general international law, but also dealing with human rights, refugee law, the law of the sea, and so on. The Commission might also profit from a more direct contact with reality. In any event, it would try to take account of the comments made by Mr. Njenga in his complete and very interesting report on the Committee’s work.

44. Mr. KOROMA said that the Asian-African Legal Consultative Committee might perhaps add questions of humanitarian law and human rights to the many items on its programme of work and consider the possibility of closer cooperation with ICRC and the Centre for Human Rights.

45. The CHAIRMAN thanked Mr. Njenga for his statement and the words of encouragement he had addressed to the Commission. He noted with satisfaction that the Committee remained active in the field of the law of the sea. As pointed out by Mr. Tomuschat, the Committee’s work was of great value to the Commission, which would certainly continue to benefit from its ties with the Committee. On behalf of the Commission, he accepted with pleasure the invitation to attend the next session of the Committee as an observer and wished the Committee great success in considering the important questions on its programme of work.

The meeting rose at 12.25 p.m.

2305th MEETING

Thursday, 10 June 1993, at 10.05 a.m.

Chairman: Mr. Gudmundur ERIKSSON

later: Mr. Julio BARBOZA

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Fomba, Mr. Gúney, Mr. Idris, Mr. Kabatsi, Mr. Koroma, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Robinson, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Vereshchelin, Mr. Villagrán Kramer, Mr. Yankov.


[Agenda item 5]

NINTH REPORT OF THE SPECIAL RAPPORTEUR (continued)

1. Mr. de SARAM said that as he saw it, the Special Rapporteur had sought in his ninth report (A/CN.4/450) to be responsive to the Commission’s decision in 1992 on the way in which work on the topic should proceed, and also to be sensitive to the different views repeatedly expressed, both in the Commission and in the Sixth Committee. In addition, the Special Rapporteur had recognized that the Commission should keep in mind the progressively developing principles of good-neighbourly relations and cooperation between States in the environmental field. That was particularly important at a time when the fragility of the earth’s ecosystem had become a matter of global concern; and where international

1 Reproduced in Yearbook... 1993, vol. II (Part One).