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Report of the Working Group on review of the multilateral treaty-making process

Topic:
Review of the multilateral treaty-making process

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Chapter VIII

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

A. The law of the non-navigational uses of international watercourses

157. By resolution 3315 (XXIX) of 14 December 1974, the General Assembly recommended that the Commission should continue its study of the law of the non-navigational uses of international watercourses, taking into account, *inter alia*, comments received from Member States on the questions referred to in the annex to chapter V of the Commission's report on the work of its twenty-sixth session.⁶⁵⁷ At its twenty-eighth session, in 1976, the Commission had before it the replies received from 21 Member States, submitted pursuant to General Assembly resolution 3315 (XXIX).⁶⁵⁸ By resolution 31/97 of 15 December 1976, the General Assembly urged Member States that had not yet done so to submit to the Secretary-General their written comments on the subject of the law of the non-navigational uses of international watercourses. At the current session, the Commission had before it additional replies to its questionnaire submitted by four Member States pursuant to General Assembly resolution 31/97 (A/CN.4/314)⁶⁵⁹.

158. At its 1526th meeting, held on 26 July 1978, the Commission heard a statement by the Special Rapporteur on the topic, Mr. Stephen M. Schwebel. The Special Rapporteur spoke, *inter alia*, of recent activities within the United Nations that concerned the topic of the law of the non-navigational uses of international watercourses. He drew attention to the Mar del Plata Action Plan adopted by the United Nations Water Conference,⁶⁶⁰ and recalled that members of the Commission were aware of Economic and Social Council resolution 2121 (LXIII) of 4 August 1977, entitled "Report of the United Nations Water Conference", and of General Assembly resolution 32/158 of 19 December 1977, entitled "United Nations Water Conference", as well as of the views of the Committee on Natural Resources of ESCAP, which had been transmitted to the Chairman of the Commission at its twenty-ninth session. It was noted that, by its resolution 32/151 of 19 December 1977, the General Assembly had recommended that the Commission should continue its work on the law of the non-navigational uses of international watercourses. Reference was also made to the

activities of two groups of experts established under the auspices of UNEP.⁶⁶¹

159. The Special Rapporteur also informed the Commission that, in co-operation with the Office of Legal Affairs, the secretariats of certain United Nations bodies, programmes and regional economic commissions, as well as certain specialized agencies and other international organizations, had been requested to provide recent information and materials relevant to the topic. Finally, he drew attention to document A/CN.4/314, circulated during the current session, which contained four additional replies submitted by governments to the Commission's questionnaire on the topic,⁶⁶² and stressed the importance of receiving as many replies as possible as soon as possible.

160. At the same meeting, the Commission took note of the presentation made by the Special Rapporteur and expressed the hope that he could proceed in the near future with the preparation of a report on the topic. It decided to stress once again the invitation to governments of Member States that had not already done so to submit their replies to the Commission's questionnaire, in pursuance of General Assembly resolution 31/97 referred to above.

B. Review of the multilateral treaty-making process

161. By its resolution 32/48 of 8 December 1977, the General Assembly requested the Secretary-General to prepare a report on the techniques and procedures used in the elaboration of multilateral treaties, and invited governments and the Commission to submit their observations on that subject by 31 July 1979, for inclusion in the Secretary-General's report.⁶⁶³ Pursuant to that invitation, the Commission included in the agenda of its current session an item entitled "Review of the multilateral treaty-making process".

162. At its 1486th meeting, held on 25 May 1978, the Commission set up a working group, composed of Mr. Robert Q. Quentin-Baxter (Chairman), Mr. Juan José Calle y Calle, Mr. Frank X.J.C. Njenga, Mr. C. W. Pinto and Mr. Alexander Yankov, to consider the preliminary questions raised by resolution 32/48 and to make recommendations to it on action to be taken in response to the General Assembly's invitation.

⁶⁵⁷ *Yearbook ... 1974*, vol. II (Part One), p. 301, doc. A/9610/Rev.1.

⁶⁵⁸ *Yearbook ... 1976*, vol. II (Part One), pp. 147, doc. A/CN.4/294 and Add.1.

⁶⁵⁹ Reproduced in *Yearbook ... 1978*, vol. II (Part One).

⁶⁶⁰ *Report of the United Nations Water Conference* (United Nations publication, Sales No. E.77.II.A.12), chap. I.

⁶⁶¹ Intergovernmental working group of experts on natural resources shared by two or more States; Group of experts on environmental law.

⁶⁶² See para. 157 above.

⁶⁶³ See A/CN.4/310 (Note by the Secretariat), reproduced in *Yearbook ... 1978*, vol. II (Part One).

163. The Working Group held three meetings, on 7, 12 and 20 July 1978, in the course of which there were exchanges of views as to the way in which the Commission could best respond to the General Assembly's invitation. At its last meeting, the Group approved its report (A/CN.4/L.283). The Commission, at its 1526th meeting on 26 July 1978, approved the report of the Working Group and decided to include paragraphs 164 to 169 below in its report to the General Assembly on the work of its current session, as recommended by the Working Group.

164. The Commission considers that a review of the multilateral treaty-making process constitutes a very important question and that such an endeavour requires serious consideration and thought. In the light of that fact, and of the role the Commission plays, pursuant to its Statute, in the progressive development of international law and its codification, the Commission welcomes the opportunity to make a contribution to the study of the question.

165. In accordance with General Assembly resolution 32/48, the Secretary-General's report is to be a factual report on the techniques and procedures used in multilateral treaty-making, primarily within the United Nations. It would take account of other treaty-making practices to the extent needed for purposes of comparison. The report would describe the various technical and procedural United Nations patterns in treaty-making so as to facilitate the assessment of their merits by the General Assembly.

166. It had been recognized, during discussion in the Sixth Committee of the General Assembly, that the Commission's observations would necessarily be more in the nature of an appraisal. The Commission will wish to make a careful evaluation of its own performance and potential. In so doing, the Commission will be greatly helped by past reports of its Planning Group and by its members' extensive experience in other treaty-making forums.

167. It has to be stressed that the Commission's productive capacity depends primarily upon two factors: first, the work that the Commission can accomplish during a 12 week annual session and the work that its members, particularly the special rapporteurs, can accomplish at other times of the year; secondly, the analysis of materials, selection of documentation and preparation of studies by the Codification Division of the Office of Legal Affairs in the sphere of work of the Commission on the various topics on its agenda, all of which requires a reasonable increase in the manpower and financial resources of the Division. The Commission had hoped that this would be done earlier, in accordance with its recommendations of several years ago, and it recalled in that connexion that the General Assembly, by its resolution 32/151 of 19 December 1977, had already endorsed the Commission's recommendation for the strengthening of the Codification Division, in order to ensure the Division's year-round support of the work of the Commission both in research and in other essential services.

168. Moreover, as was recognized during the debate on this question in the Sixth Committee of the General Assembly, an assessment of the technical and procedural

aspects of treaty-making, as practised by the Commission, would have to be set in a wider context that took into account the subject-matter of the topics chosen for codification and progressive development. Indeed, a study of the process of selection of topics, and of the interplay between the work of the Commission and that of other treaty-making forums, should be one of the most interesting and constructive facets of the Commission's response to the General Assembly's invitation to furnish comments.

169. In the light of the foregoing considerations, the Commission approved the recommendations of the Working Group that the Group be reconstituted, taking into account as far as possible the need for continuity of membership, at the beginning of the Commission's thirty-first session, and that it be asked to present a final report to the Commission not later than 30 June 1979.

C. International liability for injurious consequences arising out of acts not prohibited by international law

170. As noted above,⁶⁶⁴ at its current session the Commission established a working group to consider, in a preliminary manner, the scope and nature of the topic of international liability for injurious consequences arising out of acts not prohibited by international law, and to report to it thereon.

171. The Working Group consisted of Mr. Robert Q. Quentin-Baxter (Chairman), Mr. Roberto Ago, Mr. Jorge Castañeda and Mr. Frank X.J.C. Njenga. It held three meetings, on 6, 13 and 21 July 1978, and submitted a report to the Commission (A/CN.4/L.284 and Corr.I).

172. From the outset of its work on the topic of State responsibility, the Commission agreed that that topic should deal only with the consequences of internationally wrongful acts,⁶⁶⁵ and that "in defining the general rule concerning the principle of responsibility for internationally wrongful acts, it was necessary to adopt a formula which did not prejudice the existence of responsibility for lawful acts".⁶⁶⁶ That conclusion met with broad acceptance in the discussion of the Sixth Committee of the General Assembly at its twenty-fifth session, in 1970.⁶⁶⁷

173. In 1973, when the Commission started to work on the first set of draft articles on State responsibility, it referred to the matter in more definite terms:

... If it is thought desirable—and views to this effect have already been expressed in the past both in the International Law Commission and in the Sixth Committee of the General Assembly—the International Law Commission can undertake the study of the so-called responsibility for risk after its study on responsibility for wrongful acts has been completed, or it can do so simultaneously but separately.⁶⁶⁸

⁶⁶⁴ Para. 9.

⁶⁶⁵ See, for example, *Yearbook ... 1969*, vol. II, p. 233, doc. A/7610/Rev.1, para. 83.

⁶⁶⁶ *Yearbook ... 1970*, vol. II, pp. 307 and 308, doc. A/8010/Rev.1, para. 74.

⁶⁶⁷ *Official Records of the General Assembly, Twenty-fifth Session, Annexes*, agenda item 84, doc. A/8147.

⁶⁶⁸ *Yearbook ... 1973*, vol. II, p. 169, doc. A/9010/Rev.1, para. 39.