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Summary record of the 2519th meeting

Topic:
Other topics

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE FIFTIETH SESSION

*Summary records of the 2519th to 2548th meetings
held at Geneva from 20 April to 12 June 1998*

2519th MEETING

Monday, 20 April 1998, at 3.05 p.m.

Outgoing Chairman: Mr. Alain PELLET

Chairman: Mr. João BAENA SOARES

Present: Mr. Addo, Mr. Al-Khasawneh, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Dugard, Mr. Economides, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Sepúlveda, Mr. Simma, Mr. Thiam.

Opening of the session

1. The OUTGOING CHAIRMAN declared open the fiftieth session of the International Law Commission and welcomed the members of the Commission. The session would be exceptional in three respects: first, because the fiftieth anniversary would be marked, fittingly, by a two-day seminar, on 21 and 22 April; secondly, because, for the first time in a long time, the Commission would be trying out a session split into two parts, the first in Geneva and the second in New York; and, lastly, because the Commission would have a heavy agenda, but a very interesting one, since it would be taking up two new topics and resuming consideration of two old ones.

Statement by the outgoing Chairman

2. The OUTGOING CHAIRMAN said that, as customary, he had introduced to the Sixth Committee the report of the Commission on the work of its forty-ninth session.¹ In so doing, he had concentrated on making a few comments on the working of the Commission and its relations with the Sixth Committee and had pointed out in particular that it was the Commission's wish to have the benefit of detailed instructions from States and to obtain clearer, more precise and less stereotyped reactions from the Sixth Committee. He had underlined the need for an improved dialogue between the two parties to the codification process and had noted that, as the Commission had for its part undertaken an in-depth reform of its methods of work, it was at the current time incumbent upon the Sixth Committee also to take steps to that end. Those comments had been received favourably and with understanding and the Sixth Committee had also accepted two innovations in respect of which he had taken the initiative and which, in his view, had had a positive effect. First of all, half a day had been devoted to informal exchanges of view between the representatives of States in the Sixth Committee and members of the Commission who had been present in New York; that had allowed them all to express themselves more freely than in a public meeting and to institute a genuine dialogue. In his view, that profitable exercise was worth repeating. Secondly, and contrary to custom, he had requested the Special Rapporteur for the topic of nationality in relation to succession of States, who in that capacity had been present on the podium of the Sixth Committee, to react to the comments made by the representatives of States on chapter IV of the report of the Commission on the work of its forty-ninth session. That exercise should also be repeated and developed in two directions. On the one hand, it seemed only right and proper for the Special Rapporteur himself, who had been appointed by the Commission, rather than the Chairman, to introduce the part of the report that dealt with his topic.

¹ *Yearbook . . . 1997*, vol. II (Part Two).

On the other, even though it might be vain to hope that the United Nations would agree to finance the travel and accommodation of all the Special Rapporteurs, those who were in New York at the time when the report of the Commission was under consideration in the Sixth Committee should be invited to do the same.

3. As to the actual consideration of the report of the Commission on the work of its forty-ninth session in the Sixth Committee, he would refer mainly to the excellent topical summary prepared by the Secretariat (A/CN.4/483). The report had been well received on the whole, in particular on account of its brevity and relative concision—a lesson that could be followed in the future.

4. The draft articles on nationality in relation to the succession of States and the Special Rapporteur for the topic had, justifiably, received fulsome praise. Apart from some reservations, the Commission's general approach had been approved and, in particular, the "angle of attack" taken—protection of human rights and the need to avoid statelessness—had been approved. The General Assembly, in its resolution 52/156, had requested States to express their views on the draft articles and, even if the final resolution was silent on the matter, it could be inferred from the debates that the Commission was required to pursue its work on the item, including the effects of a succession of States on the legal status of legal persons.

5. With regard to the topic of reservations to treaties, the preliminary conclusions on reservations to normative multilateral treaties including human rights treaties adopted by the Commission² had not given rise to the opposition that might have been expected, although some provisions had been criticized. A majority had taken the view that the Commission had achieved a satisfactory balance and the idea of addressing the preliminary conclusions to the competent treaty bodies in the field of human rights had been approved, it being understood, however, that paragraph 4 of General Assembly resolution 52/156 called for such consultation to be extended to other bodies set up by normative multilateral treaties. With but a few slight differences, the delegations who had spoken on the topic had approved the Commission's general approach of taking the "Vienna regime" and trying to clarify and complete it where necessary (A/CN.4/483, sect. B).³ As a logical consequence of that consensus, a very large majority of delegations had come out in favour of the unity of the regime of reservations and the preparation of a guide to practice, which the Commission had in principle, decided on at its forty-ninth session.⁴

6. In the case of the topic of State responsibility, there was apparently broad agreement in the Sixth Committee that the Commission should "put an end to" the topic and that the second reading of the draft should be completed by the end of the current quinquennium at the latest (A/CN.4/483, sect. C), which was also the intent of the Commission. Like the Commission, the delegations which had spoken on the topic had then noted that the three most

"problematic" aspects were crime, countermeasures and dispute settlement. Some delegations had made detailed comments on several aspects of the draft, which had been deemed to be both too specific on some points and too superficial on others.

7. As far as the topic of international liability for injurious consequences arising out of acts not prohibited by international law was concerned, passions still ran high 20 years after its inclusion on the Commission's agenda, but no delegation had objected to the Commission's decision to deal first with the issue of prevention. He had nevertheless drawn the Sixth Committee's attention to the fact that precise guidance from States and the Committee on the remainder of the topic was essential and should be provided within two years, failing which the Commission would be unable to get out of the deadlock it had been in for 20 years.

8. No State that had spoken in the Sixth Committee, with one exception, had questioned the usefulness of discussing the new topics of unilateral acts and diplomatic protection.

9. Referring to the other activities with which he had been concerned at the end of his term as Chairman of the Commission at its forty-ninth session, he said that, on 6 October 1997, he had addressed a letter to the Secretary-General after the members of the Commission had reacted with consternation to the Secretary-General's "discretion" about the Organization's legal affairs in his report entitled "Renewing the United Nations: a programme for reform".⁵ The Secretary-General's reply, dated 9 December 1997, had been cordial, but dismissive. He regretted that the Secretary-General had not seen fit to meet with him when he had been in New York, as he had requested. The Secretary-General undoubtedly had a very busy schedule, but he could not help thinking that his refusal showed a lack of consideration for the Commission.

10. Concerning cooperation with other bodies, he had heard virtually nothing from the Inter-American Juridical Committee, but, in January 1998, the Asian-African Legal Consultative Committee (AALCC) had organized the Seminar on the Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties, held at Tehran, from 24 to 25 January 1998, in which Mr. Crawford had taken part. Mr. Yamada had agreed to represent the Commission at the thirty-seventh session of AALCC, held in New Delhi, from 13 to 18 April 1998, of which Mr. Sreenivasa Rao had been elected Chairman. With regard to the Council of Europe, Mr. Ferrari Bravo had represented the Commission at a meeting of the Ad Hoc Committee of Legal Advisers on Public International Law (CAHDI) in February 1998, during which a number of matters connected with the report of the Commission on the work of its forty-ninth session had been considered. In his capacity as Special Rapporteur on the topic of reservations to treaties, he himself had been invited to participate on the subject in the first meeting of the Group of Specialists on Reservations to International Treaties in Paris, on 26 and 27 February 1998.

² Ibid., pp. 56-57, para. 157.

³ For an explanation of the "Vienna regime", see *Yearbook* . . . 1996, vol. I, 2460th meeting, para. 9.

⁴ *Yearbook* . . . 1997, vol. II (Part Two), p. 46, para. 63.

⁵ A/51/950 and Add.1-7.

11. In conclusion, he thanked the Secretariat for having organized two meetings to commemorate the Commission's fiftieth anniversary. He hoped that the seminar to be held on 21 and 22 April 1998 would be as much of a success as the United Nations Colloquium on Progressive Development and Codification of International Law, held in New York on 28 and 29 October 1997.⁶ That Colloquium had opened up many avenues for future reflection that should be explored by the Planning Group at the fiftieth session.

12. Mr. CORELL (Under-Secretary-General for Legal Affairs, the Legal Counsel) said that the Secretary-General had not been able to open the Colloquium in New York or to meet with the Chairman of the Commission because of his very busy schedule and certainly not because of a lack of interest in international law. The Secretary-General had attended one of the Commission's meetings during its forty-ninth session⁷ and the importance of international law had been stressed in two parts of his report on renewing the United Nations, particularly in connection with the establishment of an international criminal court, a project which had originated with the Commission. As the Secretary-General had pointed out in his letter to the Chairman of the Commission, dated 9 December 1997, the report dealt with reforms urgently required within the Secretariat to enable the Organization better to fulfil its functions. The machinery of international law, which was constantly adapting to the needs of the international community, did not, in comparison with other areas, seem to require immediate restructuring. The development of international law was a continuous dialectical process being carried out in a number of forums, including the Commission itself, which had an important role to play in any plans for future reform in that field. The diligence with which the Commission had examined its methods of work and work programme augured well for the future.

Election of officers

Mr. Baena Soares was elected Chairman by acclamation.

Mr. Baena Soares took the Chair.

13. The CHAIRMAN thanked the members of the Commission for the honour they had done him in electing him Chairman and said he hoped that he would prove worthy of the confidence placed in him. He would try to fulfil his functions in a spirit of openness and to continue with the innovations which had been introduced by the outgoing Chairman and that had improved the Commission's working methods and promoted an open exchange of views.

14. He suggested that the meeting should be suspended in order to give members more time for consultations on the membership of the Bureau.

⁶ See *Proceedings of the United Nations Colloquium on Progressive Development and Codification of International Law, Making Better International Law: the International Law Commission at 50* (United Nations publication, Sales No. E/F.98.V.5).

⁷ See *Yearbook . . . 1997*, vol. I, 2506th meeting, pp. 233-234.

The meeting was suspended at 3.45 p.m. and resumed at 4 p.m.

Mr. Lukashuk was elected first Vice-Chairman by acclamation.

Mr. Goco was elected second Vice-Chairman by acclamation.

Mr. Simma was elected Chairman of the Drafting Committee by acclamation.

Mr. Dugard was elected Rapporteur by acclamation.

Adoption of the agenda (A/CN.4/485)

15. The CHAIRMAN invited the Commission to adopt the provisional agenda (A/CN.4/485), on the understanding that that decision in no way prejudged the order in which the various items would be considered.

16. Mr. MIKULKA pointed out that the wording of agenda item 5 corresponded to the initial wording of the topic for which he was Special Rapporteur. That wording should be replaced by the title adopted at the forty-eighth session, namely, "Nationality in relation to the succession of States".⁸

The agenda, as amended, was adopted.

Organization of work of the session

[Agenda item 1]

17. The CHAIRMAN suggested that, in conformity with established practice, the Enlarged Bureau should meet immediately to discuss the organization of work of the session.

The meeting rose at 4.15 p.m.

⁸ See *Yearbook . . . 1996*, vol. II (Part Two), p. 76, document A/51/10, para. 88.

2520th MEETING

Tuesday, 28 April 1998, at 10.05 a.m.

Chairman: Mr. João BAENA SOARES

Present: Mr. Addo, Mr. Al-Khasawneh, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Dugard, Mr. Economides, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Operti Badan, Mr. Pambou-