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Summary record of the 2677th meeting

Topic:
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question at a later session of the Assembly, with a view to the possible conversion of the articles into a convention, if the Assembly judged such a course to be appropriate, as did many members of the Commission.

63. Thirdly, it did not seem necessary for the Commission to specify when that should occur. In any case, that was a matter for the internal organization of the Sixth Committee, which had a number of other texts before it. But the second stage would involve, in due course, consideration of that question.

64. Fourthly, the articles that, it was to be hoped, the Commission would adopt and the General Assembly note in general terms in its resolution, would not contain machinery for dispute settlement, which was not appropriate for articles as such. That was of course without prejudice to the question of provisions on the relationship between countermeasures and dispute settlement and on the Chinese proposal, in the comments and observations received from Governments (A/CN.4/515 and Add.1–3), should the Drafting Committee find it appropriate in the light of the debate to deal with those issues in the text. To repeat, there would be no provision in the articles for dispute settlement machinery. However, the Commission would draw attention to the desirability of settlement in disputes concerning State responsibility; to the machinery elaborated by the Commission in the draft adopted on first-reading¹³ as a possible means of implementation, but also to other possibilities; and would leave it to the Assembly in the second phase to consider whether and what provisions for dispute settlement could be included in an eventual convention.

65. It was thought that a procedure along those lines could contribute to the adoption of the articles by consensus, along with a consensus approach to the question of their future treatment.

The meeting rose at 12.05 p.m.

¹³ See 2665th meeting, footnote 5.

2676th MEETING

Tuesday, 15 May 2001, at 10. a.m.

Chairman: Mr. Peter KABATSI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Gaja, Mr. Galicki, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Lukashuk, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

Organization of work of the session (*continued*)*

[Agenda item 1]

1. The CHAIRMAN invited Mr. Hafner, the Chairman of the Planning Group, to announce the final composition of the Group.

2. Mr. HAFNER (Chairman of the Planning Group) said that the Planning Group would be composed of the following members: Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Galicki, Mr. Idris, Mr. Kamto, Mr. Kusuma-Atmadja, Mr. Pellet, Mr. Rosenstock, Mr. Yamada and Mr. He (ex officio).

The meeting rose at 10.05 a.m.

* Resumed from the 2673rd meeting.

2677th MEETING

Friday, 18 May 2001, at 10.05 a.m.

Chairman: Mr. Peter KABATSI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Baena Soares, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Galicki, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

Statement by the Legal Counsel

1. The CHAIRMAN invited Mr. Hans Corell, Under-Secretary-General for Legal Affairs, the Legal Counsel, to brief the Commission on the latest legal developments in the United Nations.

2. Mr. CORELL (Under-Secretary-General for Legal Affairs, the Legal Counsel) said that the report of the Secretary-General, "We the peoples: the role of the United Nations in the twenty-first century" (Millennium Report),¹ to the Millennium Summit, held from 6 to 8

¹ A/54/2000.

September 2000, contained many references to the legal elements of the work of the United Nations. In the run-up to the Summit, the Office of Legal Affairs had suggested that attention be drawn to the opportunity it provided for Heads of State and Government to sign and ratify conventions. In an unprecedented development, over the three days of the Summit a total of 273 treaty actions had been taken. That successful experiment was henceforth to be repeated at each General Assembly: every Spring, delegations would be reminded that Heads of State and Government attending the Assembly could use the occasion to sign and ratify conventions at the Office of Legal Affairs, in the presence of the media. The United Nations Millennium Declaration, adopted by the Assembly in resolution 55/2 of 8 September 2000, also contained very strong commitments to the rule of law, particularly in paragraphs 9, 24 and 25, laying down parameters that could subsequently be extended, and several references to ICJ and the desirability of settling conflicts by peaceful means.

3. He wished to congratulate the Commission on the progress it had made with regard to the topics on its agenda. The General Assembly, too, had expressed its appreciation for the work accomplished. It was very much to be hoped that work on the topics of State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) would be concluded at the current session. As members were aware, the Assembly had taken note of that part of the report of the Commission on the work of its fifty-second session concerning the length, nature and place of future sessions of the Commission.² He could not emphasize strongly enough the need for the Commission to make rational and efficient use of its time and resources. There was no doubt that the Assembly would exercise extreme vigilance with regard to the coming split sessions, which must not prove more costly or less productive than the continuous sessions. It was expected that all costs for the current session would be covered from funds within existing resources. With regard to future sessions, provision had been made for a 10-week split session for the fifty-fourth session of the Commission.

4. In its resolution 55/153 of 12 December 2000, the General Assembly expressed its appreciation to the Commission for its valuable work on the topic of nationality of natural persons in relation to the succession of States; took note of the articles on the topic; and invited Governments to take into account, as appropriate, the provisions contained in the articles in dealing with issues of nationality of natural persons in relation to the succession of States. It also recommended that all efforts be made for the wide dissemination of the text of the articles—a recommendation pursuant to which the articles had since been made available on the Internet, while further options were also currently being discussed. Lastly, the Assembly decided to include the topic on the agenda of its fifty-ninth session, the purpose being to consider the possibility of concluding a convention.

5. On jurisdictional immunities of States and their property, the General Assembly, in resolution 55/150 of 12 December 2000, had established an Ad Hoc Committee on Jurisdictional Immunities of States and Their Property to meet for two weeks in March 2002, to further the work done on the topic, consolidate areas of agreement and resolve outstanding issues with a view to elaborating a generally acceptable instrument.

6. In June 2000, the Preparatory Commission for the International Criminal Court had completed its work on the draft text of the Rules of Procedure and Evidence, and on the Elements of Crimes. In the course of its work the Preparatory Commission had brought to light some technical inadvertencies in the text: hence the delay in issuing the final text of the Rome Statute of the International Criminal Court. A final version should be issued shortly, whereupon parliaments could proceed to ratification.

7. The Preparatory Commission was currently considering five items: the draft relationship agreement between the International Criminal Court and the United Nations; the draft agreement on the privileges and immunities of the Court; the rules of procedure of the Assembly of States Parties; the draft financial regulations and rules; and the definition of the crime of aggression. Substantive progress had been made on several of those topics, some of which were expected to be completed at the Preparatory Commission's next session, to be held from 24 September to 5 October 2001. The Preparatory Commission had already begun to look at practical arrangements for the establishment of the Court. Many believed that the Rome Statute of the International Criminal Court, which had received 139 signatures and 31 ratifications, would come into force by mid-2002. Paraguay was the latest State to have ratified the Rome Statute, on 14 May 2001.

8. As to efforts to establish international criminal courts in Sierra Leone and Cambodia, the Security Council, by resolution 1315 (2000) of 14 August 2000, requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court, not, as in the cases of the former Yugoslavia and Rwanda, under Chapter VII of the Charter of the United Nations, but under a *sui generis* arrangement. On 1 January 2001 agreement had been reached between the Government of Sierra Leone, the Council and the Secretary-General on the establishment of a court and on its statute. On 23 March 2001 the Secretary-General had invited Member States to submit pledges of voluntary contributions to the funding of the court by 22 May 2001. Meanwhile, he had met personally several times with a group of interested States, and a small management committee would shortly be created to ascertain whether the voluntary contributions pledged would provide the funding necessary to run the court.

9. Cambodia was a more complex case: a national court was envisaged, but one with an international presence. In 2000 he had visited Phnom-Penh twice to negotiate with Mr. Sok An, Senior Minister in charge of the Council of Ministers, the text of an agreement between the United Nations and the Government of Cambodia. However, it was not until January 2001 that the National Assembly and Senate had adopted a national law on the question,

² *Yearbook . . . 2000*, vol. II (Part Two), paras. 734–735.

a text that had subsequently been referred to the Constitutional Council for review. Some issues of national concern clearly still remained, and the Office of Legal Affairs was currently awaiting an official translation of the law adopted by the Parliament, whereupon the agreement would be finalized.

10. On terrorism, the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 had held its fifth session from 12 to 23 February 2001 and had continued its consideration of a draft international convention for the suppression of acts of nuclear terrorism, as well as of a draft comprehensive convention on international terrorism. Pursuant to its mandate, the Ad Hoc Committee had also addressed the question of convening a high-level conference on terrorism. The Ad Hoc Committee's mandate had been renewed by General Assembly resolution 55/158 of 12 December 2000.

11. The United Nations Convention against Transnational Organized Crime (Palermo Convention), and the Protocols thereto (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime), had been opened for signature at the High-level Political Signing Conference held in Palermo, Italy, from 12 to 15 December 2000, the opening ceremony of which had been attended by the Secretary-General of the United Nations. In an overwhelming expression of multilateral solidarity, 124 countries had signed the Convention, while the two Protocols thereto had received 82 and 79 signatures respectively. The numbers of signatures currently stood at 126, 85 and 82, but no ratifications or accessions had yet been lodged. The objective of the Convention and the Protocols was to enhance international cooperation in combating organized crime, including money laundering. Provision was made, *inter alia*, for cooperation on judicial matters, synchronization of national legislation, exchange of information, extradition and protection of witnesses. The Convention also established a funding mechanism to assist needy countries in implementing their international legal obligations in the domestic arena. Further protocols would be negotiated under the Convention. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime had already been completed and would shortly be open for signature. The Signing Conference had been accompanied by a well-attended Symposium entitled, "The Rule of Law in the Global Village – Issues of Sovereignty and Universality", covered extensively by the international media. In his capacity as the Legal Counsel, he had participated as a keynote speaker in the Symposium, which had covered a range of current issues of concern, including cybercrime.

12. On the law of the sea, the eleventh Meeting of States Parties to the United Nations Convention on the Law of the Sea was being held in New York from 14 to 18 May 2001, and was considering items such as the revised Financial Regulations of the International Tribunal for the

Law of the Sea; rules of procedure of the Meeting of States Parties; the establishment of a finance committee; and matters related to the United Nations Convention on the Law of the Sea, in particular with respect to article 319, which required the Secretary-General to report to States Parties on developments with regard to the law of the sea. At the time the Convention had been drafted, it had not been foreseen that the General Assembly would play such an active role in work on the law of the sea. As his department submitted an annual report to the Assembly on matters relating to the law of the sea, that report should perhaps also suffice for the Meeting of States Parties. The latest report, which was available on the Internet, contained frightening evidence of the many and ever increasing threats to the seas.

13. The United Nations Open-ended Informal Consultative Process established by the General Assembly in its resolution 54/33 in order to facilitate the annual review by the Assembly of developments in ocean affairs held its second meeting from 7 to 11 May 2001 and focused on marine science and the development and transfer of marine technology, as well as on coordination and cooperation on combating piracy and armed robbery at sea.

14. For the past 10 years or more, informal meetings of the legal advisers to ministries of foreign affairs had been held alongside the meetings of the Sixth Committee during the discussion of the report of the Commission to the General Assembly, the purpose being to secure the presence of persons who played a particularly crucial role in coordinating the work of the various national ministries affected by Commission proposals. The next meeting of legal advisers would take place on 29 and 30 October 2001 and would be coordinated by Mr. Sreenivasa Rao.

15. With regard to outreach programmes, on 6 June 2000 he had taken the initiative of circulating a letter, through the legal advisers in capitals, and the newsletter of the American Society of International Law, appealing to deans of law schools worldwide to incorporate the teaching of international law in their curricula. He had also discussed the proposal at a meeting of deans and professors of Russian law schools, held in Moscow in November 2000. The advantages of enhancing the teaching and dissemination of international law at every level were obvious. Follow-up to his initiative must, however, come from academics themselves. Meanwhile, the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law continued. The programme included the organization of courses and seminars, ad hoc legal publications, continuous updating of international law websites, and maintenance and expansion of the United Nations international law audio-visual library. During 2000, a regional seminar for countries of Central Asia and the Middle East, held in Tehran, had been attended by 26 participants from 14 countries of the region.

16. He would like to draw attention to the Office of Legal Affairs web page³ which was also accessible via the international law link⁴ on the main United Nations

³ <http://untreaty.un.org/ola-internet/olahome.html>.

⁴ <http://www.un.org/law/>.

website. The web page includes important links to information from the Legal Counsel and to the “Strategy for an Era of Application of International Law—Action Plan”. On the general question of Internet access, he found it regrettable that the United Nations currently charged students for access to the treaty collection. Arrangements were, however, being made for certain categories of user to have access to the site free of charge via a password.

17. The past 10 years had seen remarkable developments in international law. Issues of the rule of law at the national level and in international relations currently occupied a prominent place on the agenda of the United Nations. The Secretary-General was personally deeply committed to that agenda; and the Commission, too, played an important role in that work. Accordingly, he wished members of the Commission every success in their future endeavours.

18. The CHAIRMAN invited members of the Commission to put questions and observations to the Legal Counsel.

19. Mr. MOMTAZ said he was especially grateful to the Legal Counsel for the information he had supplied about the setting up of the special court in Sierra Leone to prosecute war crimes. When the representative of the Secretary-General had signed the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Lomé Agreement)⁵ on behalf of the United Nations, he had placed on record the objection of the United Nations against States granting an amnesty to persons accused by the court of war crimes or crimes against humanity. What steps were being taken by the Office of the Legal Counsel to prevent such persons being granted amnesty?

20. Mr. LUKASHUK said the Legal Counsel’s lecture in Moscow on developments in international law had been widely appreciated and he hoped members of the Commission would have the opportunity to read it. He emphasized the importance of the work being done by the Legal Counsel and the Office of Legal Affairs in the teaching and dissemination of international law. International law was becoming part of municipal law, and no longer the exclusive preserve of international jurists. In turn, all jurists were affected by that development and, for the sake of avoiding serious consequences, it was important that professional lawyers should not be allowed to remain illiterate in the field, as they too often were. The subject must be more widely taught, not only in its general chapter but also in the specialized fields of international criminal, economic and labour law; otherwise, municipal law might be incorrectly applied. The mass media paid almost no attention to the subject of international law. The United Nations should therefore encourage its teaching, and also the inculcation of a sense of international justice. He asked the Legal Counsel for an account of progress made within the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

21. Mr. KATEKA asked why the special court for Sierra Leone was to be funded from voluntary contributions. It was to be hoped that a lack of resources would

not lead to a denial of justice, as tended to happen at the national level. He wondered why the new court was being established on a different basis to those set up to try war crimes and crimes against humanity in Rwanda and the former Yugoslavia. There was a risk that the status of a *sui generis* tribunal would be misunderstood.

22. Mr. SIMMA said he asked for information about the progress of work on the *Repertory of Practice of United Nations Organs*.

23. Mr. DUGARD said he welcomed the emphasis the Legal Counsel had placed on legal education. However, it should be borne in mind that, in most developing countries, universities did not have access to the Internet. It would be helpful if hard copies of United Nations legal materials could be distributed to African universities.

24. Mr. YAMADA said it was always difficult to obtain the necessary resources for the work of the Commission, and he was grateful for the Legal Counsel’s efforts in that direction. He hoped the Legal Counsel would assure members of the Advisory Committee on Administrative and Budgetary Questions that the Commission was determined to implement the cost-saving measures decided upon at its fifty-second session.

25. Mr. CRAWFORD said he welcomed the improvements made by the Office of Legal Affairs in providing electronic access to its documentation. He made extensive use of the treaty database, which had greatly improved over the past five years, but the coverage of registered treaties, especially bilateral treaties, in the United Nations *Treaty Series* was quite uneven. Many States registered hardly any of their treaties, in spite of the provision of the Charter of the United Nations requiring them to do so. The attention of States should be drawn to the desirability of registering treaties, so that the database would reflect more accurately the state of treaty relations among States.

26. Mr. GALICKI said he, too, was concerned about the registration and publication of treaties. He hoped the process of publication would be speeded up, not delayed, by the introduction of electronic publishing techniques.

27. Mr. CORELL (Under-Secretary-General for Legal Affairs, the Legal Counsel), replying to the questions put by members of the Commission, said that during the negotiations for the Lomé Agreement there had indeed been a provision made to grant a general amnesty, to which the representative of the Secretary-General had objected by entering a reservation on behalf of the United Nations. The Government had assured him that there was no question of persons guilty of genocide, war crimes or crimes against humanity being granted an amnesty in Sierra Leone. The Truth and Reconciliation Commission established under the Lomé Agreement would be addressing all those issues. As for the nature of the Sierra Leone special court, it was for the institutions that set up a court to decide what kind of court it should be. Unlike the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, which had been established by the Security Council under Chapter VII of the Charter of the United Nations, in the case of Sierra Leone the Secretary-General had been assured by the Government of

⁵ S/1999/777, annex.

its cooperation, and had been requested to negotiate the arrangements for the special court. The Council had not, therefore, felt any need to apply Chapter VII of the Charter and the court would be constituted on a different technical and legal basis. As for the court in Cambodia, there had been no involvement at all on the part of the Council or the Assembly, so the Secretary-General had had to act alone in responding to a request from Cambodia for assistance in setting up a court, and in negotiating for international support. However, the standards applied must be no less stringent, and in negotiating agreements with both Sierra Leone and Cambodia he had himself insisted that the courts must uphold existing standards, especially those of article 14 of the International Covenant on Civil and Political Rights. As for the funding, a United Nations institution would normally be funded from assessed contributions, but that had not been thought necessary in the case of the Sierra Leone special court.

28. As to the comments on the teaching and dissemination of international law, he had been encouraged, during his visit to Moscow, by the presence at his lecture of a number of deans of law schools and by the keen interest in the subject within the Russian Federation.

29. With reference to Mr. Simma's question, there had been a considerable refinement of methods for measuring work within the Office of Legal Affairs since he had become Legal Counsel in 1994. At that time, the Treaty Section had been dealing with an 11-year backlog in the publication of treaties, the equivalent of 540 volumes in the *Treaty Series*. The intake of treaties amounted to about 50 volumes a year. The introduction of computer systems and desktop publishing had reduced the backlog considerably and it was expected to disappear altogether in 2002, but that meant publishing three times as many volumes a year as would appear under a normal production schedule. Once the backlog had been disposed of, the Treaty Section would have to be revamped to take account of the new situation. Again, in regard to the *Repertory of Practice of United Nations Organs*, there was a significant backlog amounting to 17 years' work, and because the task of compilation involved several departments in the Office of Legal Affairs, not the Treaty Section alone, it was no easy matter to devise an appropriate strategy to overcome it. However, in 2000 he had been able to secure funds from several departments to tackle the work outstanding, and he was monitoring progress very closely. Since the 1990s the Sixth Committee had shown a renewed interest in the *Repertory*, as a record of the history of the Organization.

30. Hard copies of legal materials were already being provided for developing countries. With the spread of new technology and the more rapid dissemination of information, access to the materials would improve.

31. He assured Mr. Yamada that he would convey his view on funding to the Advisory Committee on Administrative and Budgetary Questions. As for Mr. Crawford's concern about the registration of treaties, Article 102 of the Charter of the United Nations reflected the Organization's determination, after the experience of the 1930s and 1940s, that there would be no more "secret" treaties. The Office of Legal Affairs would persevere in reminding States of their obligation to register their treaties. The

Secretary-General was the depositary for over 520 multilateral treaties, and every time an action took place on any of them, Member States had to be notified, something that was currently being done automatically through a computer process. Treaty registration data were likewise logged automatically and thus kept fully up to date.

32. A summary of the proceedings of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization could be found on the Codification Division website. Some of the Committee functions, especially those of a political nature, had been taken away from the main Committee and entrusted to a working group under the chairmanship of the President of the General Assembly.

33. In sum, he could assure the Commission that the Organization's lawyers were at all times in the mainstream of its work.

Reservations to treaties⁶ (A/CN.4/508 and Add.1–4,⁷ A/CN.4/513, sect. D, A/CN.4/518 and Add.1–3,⁸ A/CN.4/L.603 and Corr.1 and 2)

[Agenda item 5]

FIFTH AND SIXTH REPORTS OF THE SPECIAL RAPPORTEUR

34. The CHAIRMAN recalled that at the fifty-second session the Commission had completed its discussion of Part I of the fifth report of the Special Rapporteur on reservations to treaties (A/CN.4/508 and Add.1–4). It would now take up Part II of the report.

35. Mr. PELLET (Special Rapporteur), introducing Part II of his fifth report, said that his sixth report (A/CN.4/518 and Add.1–3) would be ready for consideration during the second part of the session. He drew attention to his introduction of chapter III of the fifth report⁹ and to the coverage of the topic of reservations to treaties in the report of the Commission to the General Assembly on the work of its fifty-second session.¹⁰

36. The 14 draft guidelines and three model clauses accompanying guideline 2.3.1 that remained for consideration by the Commission all concerned the moment of formulation of reservations and interpretative declarations, whether simple or conditional. They filled something of a gap in the definition in the 1969 Vienna Convention and in the part of the Guide to Practice that incorporated and expanded on that definition. The draft guidelines fell into two groups. The first was those relating to the obligation of formal confirmation of reservations and interpretative declarations and the limitations thereon (guidelines 2.2.1 to 2.2.4 on reservations and 2.4.3 to 2.4.6 on interpretative declarations). The subject of the second group was

⁶ For the text of the draft guidelines provisionally adopted by the Commission at its fiftieth, fifty-first and fifty-second sessions, see *Yearbook . . . 2000*, vol. II (Part Two), para. 662.

⁷ See *Yearbook . . . 2000*, vol. II (Part One).

⁸ Reproduced in *Yearbook . . . 2001*, vol. II (Part One).

⁹ *Yearbook . . . 2000*, vol. I, 2651st meeting.

¹⁰ *Ibid.*, vol. II (Part Two), paras. 638–661.

the more delicate issue of late reservations and interpretative declarations (guidelines 2.3.1 to 2.3.4 and 2.4.7 and 2.4.8).

37. The general philosophy behind the second group was that late reservations constituted a threat to the stability of treaty situations. He himself did not approve of late reservations, but they existed and were undoubtedly a useful safety valve. Where a treaty accorded States parties the right to denounce the treaty, it was absurd to compel them to denounce the treaty in order subsequently to accede to it with reservations, as long as all the other States parties had no objection. In other words, that particular dog was less dangerous than some that the Commission had handled before, and while it might not have to be muzzled, it should at least be kept on a short leash. That was the very purpose of the draft guidelines outlined in paragraphs 279 to 325 of his fifth report, namely, to limit the possibility of making late reservations, so as to ensure that they remained exceptional and under the control of all the States parties.

38. The report of the Commission to the General Assembly had set out in a footnote the 14 draft guidelines still under consideration,¹¹ thereby enabling delegations to address them in their statements in the Sixth Committee. In addition, in February he had received valuable comments from the United Kingdom. In the main, observations had been made in connection with guidelines 2.2.1 (Reservations formulated when signing and formal confirmation) and 2.2.2 (Reservations formulated when negotiating, adopting or authenticating the text of a treaty and formal confirmation). One suggestion in the Sixth Committee had been that they should be merged; the United Kingdom, for its part, feared that the inclusion of guideline 2.2.2 might enshrine a practice that was devoid of legal foundation. Guideline 2.2.4 (Reservations formulated when signing for which the treaty makes express provision) had been the subject of a number of comments, including whether the rule it enunciated amounted to *lex specialis* and, accordingly, whether it was proper to include it.

39. Guideline 2.3.1 (Reservations formulated late) had been discussed. Quite a number of speakers had concurred with his dislike of late reservations and had underscored the need to limit their use. In that connection, several delegations had welcomed the decision of the Secretary-General to extend to 12 months the time period within which States could react to a late reservation. Personally, he found that time period too long, but proposed to adopt it for the purposes of the draft guidelines. Many States had expressed their views on the rules that should apply to the modification of reservations, and he had taken due note of them in drafting his sixth report.

40. The sixth report referred to recent developments with regard to reservations to treaties, of which he wished to mention one. At its fiftieth session, the Subcommittee on the Promotion and Protection of Human Rights had, in its decision 1998/113 of 26 August 1998, requested one of its members, Ms. Françoise Hampson, to submit a working paper on the question of reservations to human rights

treaties, which she had done at the fifty-first session of the Subcommittee, in 1999,¹² and the Subcommittee had taken note of that document. In response, the Commission on Human Rights had asked the Subcommittee to request Ms. Hampson to submit to the Subcommittee revised terms of reference for her proposed study, further clarifying how the study would complement work already under way on reservations to human rights treaties, in particular by the International Law Commission. In the light of that decision, no document had been submitted by Ms. Hampson to the Subcommittee at its fifty-second session, in 2000.

41. Despite the decision adopted by the Commission on Human Rights, the Subcommittee, in its resolution 2000/26 of 18 August 2000, had confirmed its previous position by establishing a timetable for Ms. Hampson's work and had requested her to seek the advice and co-operation of the Special Rapporteur of the International Law Commission and of all the relevant treaty bodies and, to that end, had requested the authorization of a meeting between Ms. Hampson and the Special Rapporteur of the International Law Commission and the Chairpersons of the relevant treaty bodies.

42. Even before that resolution had been adopted, he had contacted Ms. Hampson, as the International Law Commission had authorized him to do. It was his understanding on the basis of that informal contact that her study would not necessarily duplicate the work of the Commission, and could in fact provide material that would advance that work if, as she had assured him, the study dealt exclusively with State practice in the area of reservations to human rights treaties. If, however, the study followed the course charted in her first working paper—endorsed by the Subcommittee at its fifty-first and again at its fifty-second session—it would go far beyond a catalogue of State practice to deal with the specific regime applicable to reservations to human rights treaties, assuming such a regime existed. That would inevitably duplicate the efforts of the International Law Commission.

43. The Commission on Human Rights appeared to share his concern, for in decision 2001/113 of 25 April 2001, it had again requested the Subcommittee to reconsider its request in the light of the work under way by the International Law Commission. To be honest, he was not sure what was to be done. The Subcommittee might well pursue its course, over the objections of the Commission on Human Rights. It would be inappropriate for the International Law Commission to become involved in the relations between the two bodies, however. If the Commission agreed, he would write to Ms. Hampson, asking about her intentions and assuring her of his readiness to work with her in accordance with the decisions adopted by the Commission on Human Rights. He would also provide her with the views of the International Law Commission on the topic, and to that end, he would welcome contributions from members.

44. Lastly, he hoped that the 14 draft guidelines and 3 model clauses set out in his report could be referred to the Drafting Committee.

¹¹ *Ibid.*, footnote 199.

¹² E/CN.4/Sub.2/1999/28 and Corr.1.

State responsibility¹³ (continued)* (A/CN.4/513, sect. A, A/CN.4/515 and Add.1–3,¹⁴ A/CN.4/517 and Add.1,¹⁵ A/CN.4/L.602 and Corr.1 and Rev.1)

[Agenda item 2]

FOURTH REPORT OF THE SPECIAL RAPporteur
(concluded)*

45. Mr. CRAWFORD (Special Rapporteur), reporting on two meetings of the open-ended working group convened to provide guidance to the Drafting Committee on the remaining questions of principle relating to the draft articles on State responsibility, said the Committee had already resolved the issues relating to terms such as “injured State”, “injury” and “damage”. Two groups of issues of general concern had remained, however. The first related to Part Two, chapter III (Serious breaches of essential obligations to the international community), and the second to Part Two *bis*, now renumbered as Part Three, chapter II (Countermeasures). A helpful discussion had been held and the Committee had already implemented the results by completing, in a form that was extremely satisfactory, a new version of Part Two, chapter III.

46. Part Two, chapter III, had been the subject of lengthy and difficult discussion. It was generally agreed that it could be retained, with the deletion of paragraph 1 of article 42 (Consequences of serious breaches of obligations to the international community as a whole), which referred to damages reflecting the gravity of the breach, but with the possible substitution, to be considered by the Drafting Committee, of a category dealing with serious breaches of an obligation established by a peremptory norm of general international law. Apart from the fact that the notion of a peremptory norm was well established by the 1969 Vienna Convention, it had seemed sensible to envisage the effect of such fundamental obligations as relating to the underlying issues of obligation covered in Parts One and Two. The notion of obligations to the international community as a whole related more to questions of invocation, as ICJ had put it in the *Barcelona Traction* case. It had also been proposed that the Committee should give further consideration to aspects of the consequences of serious breaches, as contained in article 42.

47. As to Part Three, chapter II, the working group had thought it undesirable to try to incorporate all or a substantial part of the articles on countermeasures into article 23 (Countermeasures in respect of an internationally wrongful act), which was about only one aspect of the problem. Article 23 would be retained, as would Part Three, chapter II, but article 54 (Countermeasures by States other than the injured State) had been extremely controversial and would be replaced by a saving clause, the terms of which were still to be discussed by the Drafting Committee. Article 53 (Conditions relating to resort

to countermeasures) would be reconsidered, as many members of the Commission had cast doubt on the value of the distinction drawn between provisional and urgent countermeasures on the one hand, and other countermeasures, on the other. Among other things all countermeasures were provisional, in a sense. It had also been felt that article 53 should be simplified and brought into line with the decisions of the arbitral tribunal in the *Air Service Agreement* case and of ICJ in the *Gabčíkovo-Nagymaros Project* case. In addition, articles 51 (Obligations not subject to countermeasures) and 52 (Proportionality) stood in need of some reconsideration.

48. After discussion and clarification of those issues, the working group had agreed that an acceptable text could be developed and had suggested that the Drafting Committee be asked to give effect to the results of the discussion.

The meeting rose at 11.30 a.m.

2678th MEETING

Tuesday, 22 May, 2001 at 10.05 a.m.

Chairman: Mr. Peter KABATSI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Baena Soares, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

Reservations to treaties¹ (continued) (A/CN.4/508 and Add.1–4,² A/CN.4/513, sect. D, A/CN.4/518 and Add.1–3,³ A/CN.4/L.603 and Corr.1 and 2)

[Agenda item 5]

* Resumed from the 2675th meeting.

¹³ For the text of the draft articles provisionally adopted by the Drafting Committee on second reading, see *Yearbook . . . 2000*, vol. II (Part Two), chap. IV, annex.

¹⁴ See footnote 7 above.

¹⁵ *Ibid.*

¹ For the text of the draft guidelines provisionally adopted by the Commission at its fiftieth, fifty-first and fifty-second sessions, see *Yearbook . . . 2000*, vol. II (Part Two), para. 662.

² See *Yearbook . . . 2000*, vol. II (Part One).

³ Reproduced in *Yearbook . . . 2001*, vol. II (Part One).