

Document:-
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Summary record of the 1475th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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28. Mr. CALLE y CALLE and Mr. SUCHARITKUL seconded the proposal.

Mr. Pinto was unanimously elected Rapporteur.

29. Mr. PINTO thanked the Commission.

Adoption of the agenda (A/CN.4/306)

The provisional agenda (A/CN.4/306) was adopted unanimously.

The meeting rose at 5.40 p.m.

1475th MEETING

Tuesday, 9 May 1978, at 11.55 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Organization of work

1. The CHAIRMAN wished first to draw the Commission's attention to General Assembly resolution 32/151, which embodied most of the suggestions on the organization of work of the 1978 session made in the Commission's report on the work of its twenty-ninth session,¹ and to General Assembly resolution 32/48, which requested the Commission to submit, by 31 July 1979, its observations on the question of the techniques and procedures used in the elaboration of multilateral treaties.

2. As the Special Rapporteur on the topic of the law of the non-navigational uses of international watercourses would not be submitting a substantive report at the current session, the Commission now had to consider, in the order given, the following six main topics: State responsibility; the most-favoured-nation clause; succession of States in respect of matters other than treaties; the question of treaties concluded between States and international organizations or between two or more international organizations; the status of the diplomatic courier and of the diplomatic bag not accompanied by diplomatic courier; and the

second part of the topic of relations between States and international organizations.

3. If he heard no objection, he would take it that the Commission agreed to the timetable for the consideration of those topics that had been drawn up by the Enlarged Bureau and distributed to all members.

It was so agreed.

4. The CHAIRMAN said that the Enlarged Bureau had also decided to recommend to the Commission that a working group on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier be again established at the current session and that it be composed of the same members as at the previous session.²

5. If he heard no objection, he would take it that the Commission agreed to the establishment of that working group, under the chairmanship of Mr. El-Erian.

It was so agreed.

6. The CHAIRMAN said that, during the past three years, the Planning Group of the Enlarged Bureau had produced excellent results. The Enlarged Bureau was now recommending that the Planning Group be again established at the current session.

7. If he heard no objection, he would take it that the Commission agreed to the establishment by the Enlarged Bureau of the Planning Group.

It was so agreed.

8. The CHAIRMAN said that, although General Assembly resolution 32/48 did not require the Commission to submit observations on the subject of the techniques and procedures used in the elaboration of multilateral treaties until 1979, the Enlarged Bureau had been of the opinion that work on that subject ought to begin at the current session. The Enlarged Bureau had therefore decided that a small working group should be established to study the subject.

9. If he heard no objection, he would take it that the Commission agreed that consultations should be held in order to decide on the composition of the working group.

It was so agreed.

Co-operation with other bodies

[Item 11 of the agenda]

10. The CHAIRMAN said that another matter that had been discussed by the Enlarged Bureau was that of co-operation with other bodies. In that connexion, the Secretary-General of the United Nations had received a letter, dated 26 October 1977, from the Secretary-General of the League of Arab States transmitting a message from the Permanent Observer of

¹ *Yearbook... 1977*, vol. II (Part Two), p. 129, doc. A/32/10, para. 106.

² See *Yearbook... 1977*, vol. I, p. 56, 1425th meeting, para. 52.

the League to the United Nations concerning the recently established Arab Commission for International Law. The message read:

I have the honour to inform you that the Council of Ministers of the League of Arab States, in its resolution 3655 of 8 September 1977, has agreed on the establishment of a Commission for International Law on the Arab level. The Council has likewise endorsed the statutes of this Commission.

In the same resolution, the Council decided that the League of Arab States be represented in the meetings of the United Nations International Law Commission, in a similar capacity as regional organizations such as the Organization of American States and the Council of Europe are represented, in order to co-ordinate the work regarding the development and consolidation of the rules of international law on the Arab and international levels.

It would be much appreciated if you would take the necessary measures and likewise contact the Chairman of the International Law Commission to ensure the permanent presence of the League of Arab States as an observer in the meetings of the International Law Commission, commencing with the thirtieth session of the Commission to be held in Geneva on May 1978.

11. The Enlarged Bureau had considered that request and had decided to recommend to the Commission that, in accordance with article 26 of its Statute, it agree to establish relations of co-operation with the Arab Commission for International Law and to receive an observer from that Commission.

12. If he heard no objection, he would take it that the Commission agreed to follow the Enlarged Bureau's recommendation.

It was so agreed.

The meeting rose at 12.10 p.m.

1476th MEETING

Wednesday, 10 May 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Castañeda, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yankov.

Tribute to the memory of Aldo Moro

At the invitation of the Chairman, the members of the Commission observed one minute's silence in tribute to the memory of Aldo Moro.

1. Mr. AGO thanked the members of the Commission for their expression of sympathy, which he would convey to the Italian Government.

State responsibility (A/CN.4/307 and Add.1)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 23 (Breach of an international obligation to prevent a given event)

2. The CHAIRMAN invited the Special Rapporteur to introduce the part of his seventh report on State responsibility (A/CN.4/307 and Add.2) dealing with the breach of an international obligation to prevent a given event, and specifically article 23, which read:

Article 23. Breach of an international obligation to prevent a given event

There is no breach by a State of an international obligation requiring it to prevent a given event unless, following a lack of prevention on the part of the State, the event in question occurs.

3. Mr. AGO (Special Rapporteur) suggested that, during the first two weeks it was to devote to the topic of State responsibility, the Commission should supplement chapter III of the draft on State responsibility¹ by adopting articles 23 and 24 which he had submitted in his seventh report (A/CN.4/307 and Add.1). The Commission had laid down some general rules in chapter I and had dealt in chapter II with the subjective element of the internationally wrongful act; it had then gone on in chapter III—perhaps the most delicate of the entire draft—to deal with the objective element of the internationally wrongful act, namely, the determination of the existence of a breach of an international obligation owed by the State.

5. Having established in article 16 the general principle concerning the existence of a breach of an international obligation, the Commission had attempted to deal in article 17 with the question whether the origin of the obligation might have an influence on the existence of a breach of the obligation—in other words, of an internationally wrongful act—a question which it had answered in the negative. In article 18 it had laid down the fundamental rule that an act of the State constituted a breach of an international obligation only if the act was committed at the time when the obligation was in force for that State. In the same article it had also dealt with the case where the breach continued over a period of time and the obligation was in force for only part of that period.

6. The Commission had then proceeded to consider whether a distinction should be drawn, as far as the existence of a breach of the obligation was concerned, according to the content or according to the nature of the obligation in question. With regard to the content of the obligation, it had considered in article 19 the question whether normal obligations in the traditional context of international law should be dis-

¹ For the text of the articles adopted so far by the Commission, see *Yearbook... 1977*, vol. II (Part Two), pp. 9 *et seq.*, document A/32/10, chap. II, sect. B, 1.