

Document:-
A/CN.4/SR.1528

Summary record of the 1528th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
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47. The second working paper had contained his suggestions for an outline of relevant issues, based on the comments and proposals in the first working paper.

48. The third paper, prepared by the Secretariat at the Group's request, had set out the provisions of the four conventions reproduced in the first working paper and had classified them under each of the headings contained in the second paper.

49. The Working Group had agreed that there had been considerable developments in various aspects of the question in recent years and that the provisions of the conventions reproduced in the first working paper should form the basis for any further study of the question. The Group had tentatively identified 19 issues and had examined each of them in order to ascertain whether any of the four conventions adequately covered the issue concerned and what further elements could be considered as appropriately falling within each issue. Although most of the issues identified had been taken into account in the existing conventions, the Group had added others—for example, the multiple appointment of the diplomatic courier and the nationality of the diplomatic courier—on which the conventions were silent.

50. The CHAIRMAN noted that the Working Group had recommended that the Commission should include paragraphs 1-8 of the Group's report in its report to the General Assembly on the work of its current session. If there were no objections, he would take it that such was the Commission's decision.

It was so agreed.

The meeting rose at 1.05 p.m.

1528th MEETING

Thursday, 27 July 1978, at 4.10 p.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Draft report of the Commission on the work of its thirtieth session (*continued*)

CHAPTER II. *The most-favoured-nation clause* (A/CN.4/L.274 and Add.I-6)

A. Introduction (A/CN.4/L.274)

1. SUMMARY OF THE COMMISSION'S PROCEEDINGS

Subsection 1 was approved.

2. THE MOST-FAVOURLED-NATION CLAUSE AND THE PRINCIPLE OF NON-DISCRIMINATION

Subsection 2 was approved.

3. THE MOST-FAVOURLED-NATION CLAUSE AND THE DIFFERENT LEVELS OF ECONOMIC DEVELOPMENT

Paragraphs 37-40

Paragraphs 37-40 were approved.

Paragraph 41

1. Mr. SCHWEBEL suggested that the word "if", in the second sentence, should be replaced by the word "as", and the comma deleted.

It was so agreed.

Paragraph 41, as amended, was approved.

Subsection 3, as amended, was approved.

4. THE MOST-FAVOURLED-NATION CLAUSE IN RELATION TO CUSTOMS UNIONS AND SIMILAR ASSOCIATIONS OF STATES

Paragraphs 42 and 43

Paragraphs 42 and 43 were approved.

Paragraph 44

2. Mr. SCHWEBEL proposed the deletion, from the second sentence, of the words "of a political nature and that it will have".

It was so agreed.

3. Mr. RIPHAGEN suggested that some reference should be made to the fact that the Commission had had insufficient time to study the matter thoroughly.

It was so agreed.

Paragraph 44, as amended, was approved.

Subsection 4, as amended, was approved.

5. THE GENERAL CHARACTER OF THE DRAFT ARTICLES

Paragraphs 45-54

Paragraphs 45-54 were approved.

Paragraph 55

4. Mr. SCHWEBEL suggested that the insertion, at the beginning of the paragraph, of the words "while this proposal attracted some support" would better reflect the Commission's discussion of the point in question.

It was so agreed.

Paragraph 55, as amended, was approved.

Paragraphs 56-58

Paragraphs 56-58 were approved.

Subsection 5, as amended, was approved.

Section A, as amended, was approved.

B. Recommendation of the Commission (A/CN.4/L.274)

Section B was approved.

C. Resolution adopted by the Commission

Section C was approved.

D. Draft articles on most-favoured-nation clauses (A/CN.4/L.274/Add.1-6)

ARTICLES 1-7 (A/CN.4/L.274/Add.1)

Commentary to article 1 (Scope of the present articles)

The commentary to article 1 was approved.

Commentary to article 2 (Use of terms)

The commentary to article 2 was approved.

Commentary to article 3 (Clauses not within the scope of the present articles)

The commentary to article 3 was approved.

Commentary to article 4 (Most-favoured-nation clause)

The commentary to article 4 was approved.

Commentary to article 5 (Most-favoured-nation treatment)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

5. Mr. TSURUOKA pointed out that, whereas the words "object of treatment" were used in the third sentence, the same concept was expressed by the words "subjects of ... treatment" in the eighth sentence. He thought the same expression should be used in both cases.

6. Mr. VEROSTA suggested that the term "object" should be used in both sentences, since it would make it clear that the word "things" covered activities and services as well as corporeal and incorporeal things.

It was so agreed.

7. Mr. SCHWEBEL suggested that the beginning of the fifth sentence should be amended to read: "It did not find that it would be likely to arrive".

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraphs (4)-(7)

Paragraphs (4)-(7) were approved.

Paragraph (8)

8. Mr. USHAKOV proposed that the last word in the paragraph should be replaced by the word "States".

It was so agreed.

Paragraph (8), as amended, was approved.

The commentary to article 5, as amended, was approved.

Commentary to article 6 (Clauses in international agreements between States to which other subjects of international law are also parties)

The commentary to article 6 was approved.

Commentary to article 7 (Legal basis of most-favoured-nation treatment)

The commentary to article 7 was approved.

ARTICLES 8-10 (A/CN.4/L.274/Add.2)

Commentary to article 8 (The source and scope of most-favoured-nation treatment)

Paragraphs (1)-(7)

Paragraphs (1)-(7) were approved.

Paragraph (8)

9. Mr. TSURUOKA said that, in the penultimate sentence, the words "things being in a determined relationship with it are entitled" should be replaced by the words "things in a determined relationship with it is entitled".

It was so agreed.

Paragraph (8), as amended, was approved.

The commentary to article 8, as amended, was approved.

Commentary to article 9 (Scope of rights under a most-favoured-nation clause) and article 10 (Acquisition of rights under a most-favoured-nation clause)

The commentary to articles 9 and 10 was approved.

ARTICLES 11-16 (A/CN.4/L.274/Add.3)

Commentary to article 11 (Effect of a most-favoured-nation clause not made subject to compensation), article 12 (Effect of a most-favoured-nation clause made subject to compensation) and article 13 (Effect of a most-favoured-nation clause made subject to reciprocal treatment)

The commentary to articles 11, 12 and 13 was approved.

Commentary to article 14 (Compliance with agreed terms and conditions)

The commentary to article 14 was approved.

Commentary to article 15 (Irrelevance of the fact that treatment is extended to a third State against compensation)

The commentary to article 15 was approved.

Commentary to article 16 (Irrelevance of limitations agreed between the granting State and a third State)

The commentary to article 16 was approved.

ARTICLES 25-29 (A/CN.4/L.274/Add.6).

Commentary to article 25 (The most-favoured-nation clause in relation to treatment extended to facilitate frontier traffic)

The commentary to article 25 was approved.

Commentary to article 26 (The most-favoured-nation clause in relation to rights and facilities extended to a land-locked third State)

The commentary to article 26 was approved.

Commentary to article 27 (Cases of State succession, State responsibility and outbreak of hostilities)

The commentary to article 27 was approved.

Commentary to article 28 (Non-retroactivity of the present articles)
The commentary to article 28 was approved.

Commentary to article 29 (Provisions otherwise agreed)
The commentary to article 29 was approved.

CHAPTER VII. Second part of the topic "Relations between States and international organizations" (A/CN.4/L.286)

Chapter VII was approved.

CHAPTER VIII. Other decisions and conclusions of the Commission (A/CN.4/L.278 and Add.1, 3 and 4)

10. The CHAIRMAN invited the Commission to consider the parts of its draft report appearing in documents A/CN.4/L.278 and Add.3 and 4, namely, sections A, B, E, F, G, H, I, J and K.

A. The law of the non-navigational uses of international water-courses (A/CN.4/L.278)
Section A was approved.

B. Review of the multilateral treaty-making process (A/CN.4/L.278)
Section B was approved.

E. Programme and methods of work of the Commission (A/CN.4/L.278/Add.3)
Section E was approved.

F. Inclusion in the Yearbook of the Commission of the survey on "force majeure" and "fortuitous event" as circumstances precluding wrongfulness (A/CN.4/L.278/Add.3)
Section F was approved.

G. Co-operation with other bodies (A/CN.4/L.278/Add.4)

Paragraphs 1-5

Paragraphs 1-5 were approved.

Paragraph 6

11. Mr. EL-ERIAN proposed the deletion of the second sentence of paragraph 6 in order to bring the wording of the paragraph into line with that of paragraph 10.

It was so agreed.

Paragraph 6, as amended, was approved.

Paragraphs 7-13

Paragraphs 7-13 were approved.

Paragraph 14

12. Mr. EL-ERIAN suggested that the same change should be made in paragraph 14 as had been decided on for paragraph 6.

It was so agreed.

Paragraph 14, as amended, was approved.

Paragraphs 15-17

Paragraphs 15-17 were approved.

Section G, as amended, was approved.

H. Date and place of the thirty-first session (A/CN.4/L.278/Add.4)

13. The CHAIRMAN said that the Enlarged Bureau had decided to recommend that the thirty-first session of the Commission should be held from 14 May to 3 August. He proposed that those dates should be inserted in paragraph 18.

It was so agreed.

Section H, as completed, was approved.

I. Representation at the thirty-third session of the General Assembly (A/CN.4/L.278/Add.4)

Section I was approved.

J. Gilberto Amado Memorial Lecture (A/CN.4/L.278/Add.4)

Section J was approved.

K. International Law Seminar (A/CN.4/L.278/Add.4)

Paragraphs 23 and 24

Paragraphs 23 and 24 were approved.

Paragraph 25

14. Mr. ŠAHOVIĆ, supported by Mr. EL-ERIAN, suggested that the last sentence of paragraph 25 should appear as a separate paragraph at the end of the section.

It was so agreed.

Paragraphs 26 and 27

Paragraphs 26 and 27 were approved.

Section K, as amended, was approved.

The meeting rose at 5.25 p.m.

1529th MEETING

Friday, 28 July 1978, at 10.15 a.m.

Chairman : Mr. José SETTE CÂMARA

Members present : Mr. Ago, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Draft report of the Commission on the work of its thirtieth session (concluded)

CHAPTER II. *The most-favoured-nation clause (concluded)*
 (A/CN.4/L.274 and Add.1-6)