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Summary record of the 1582nd meeting

Topic:
Other topics

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2. ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

Subsection 2 was adopted.

3. EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

Subsection 3 was adopted.

Section D, as amended, was adopted.

E. Date and place of the thirty-second session

Section E was adopted.

F. Representation at the thirty-fourth session of the General Assembly

Section F was adopted.

G. International Law Seminar

Paragraphs 17-21

Paragraphs 17-21 were adopted.

Paragraph 22

13. Mr. QUENTIN-BAXTER suggested that the words "free of charge" should be deleted from the first sentence, as being superfluous.

It was so decided.

Paragraph 22, as amended, was adopted.

Paragraph 23

Paragraph 23 was adopted.

Additional paragraph

14. The CHAIRMAN suggested that section G should be completed by the addition of a last paragraph expressing the Commission's gratitude to Mr. Raton, Director of the Seminar, and to his assistant, Mrs. Petit, for their work in organizing the Seminar.

It was so decided.

Section G, as amended, was adopted.

Chapter IX, as amended, was adopted.

The meeting rose at 11.35 a.m.

1582nd MEETING

Thursday, 2 August 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Pinto, Mr. Riphagen, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Also present: Mr. Ago.

Draft report of the Commission on the work of its thirty-first session (*continued*)

CHAPTER II. *Succession of States in respect of matters other than treaties (continued)* (A/CN.4/L.302 and Add.1-4)

A. Introduction (A/CN.4/L.302)

1. HISTORICAL REVIEW OF THE WORK OF THE COMMISSION

Paragraphs 1-23

Paragraphs 1-23 were adopted.

Paragraph 24

1. The CHAIRMAN proposed the addition, at the end of paragraph 24, of the following sentence: "At its 1581st meeting, the Commission decided to change the designation of article C to article B."

It was so decided.

Paragraph 24, as amended, was adopted.

Paragraphs 25-29

Paragraphs 25-29 were adopted.

Subsection 1, as amended, was adopted.

2. GENERAL REMARKS CONCERNING THE DRAFT ARTICLES

Subsection 2 was adopted.

Section A, as amended, was adopted.

B. Draft articles on succession of States in respect of matters other than treaties (*continued*) (A/CN.4/L.302/Add1-3)

PART II (STATE PROPERTY) (*concluded*)

ARTICLES 4-14 (*concluded*) (A/CN.4/L.302/Add.2)

Commentary to article 13 (Separation of part or parts of the territory of a State) *and article 14* (Dissolution of a State) (*concluded*)

Paragraph (6) (*concluded*)

2. The CHAIRMAN reminded the Commission that at its previous meeting a working group had been appointed to review the wording of paragraph 6 of the commentary to articles 13 and 14. He invited the Chairman of the Drafting Committee to report on the group's conclusions.

3. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that the working group was of the opinion that the reference to cases of dissolution of States should be omitted. It therefore proposed that the beginning of the first sentence of paragraph (6) should be amended to read: "An old example of State practice is to be found in the treaty of 19 April 1839 concerning the Netherlands and Belgium, article XV of which provided as follows:..." It further proposed that, in the second sentence of the paragraph, the words "upon the dissolution of the" should be replaced by "in the case of the".

It was so decided.

Paragraph (6) was approved.

The commentary to articles 13 and 14 was approved.

Part II, as amended, was adopted.

PART III (STATE DEBTS)

ARTICLES 15-23 (A/CN.4/L.302/Add.3)

Commentary to article 15 (Scope of the articles in the present part)

The commentary to article 15 was approved.

Commentary to article 16 (State debt)

Paragraphs (1)-(43)

Paragraphs (1)-(43) were approved.

Paragraphs (44) and (45)

4. Mr. RIPHAGEN proposed that the last sentence of paragraph (44) should be deleted, and that the first two sentences of paragraph (45) should be replaced by the following text:

“The Commission adopted article 16, despite the reservations as to its subparagraph (b) expressed by some members, in whose view ‘State debt’ should be limited to financial obligations arising at the *international* level. Furthermore, in the view of some members of the Commission, subparagraph (b) should not extend to ‘any other financial obligation chargeable to a State’ when the creditor was an individual who was a national of the debtor predecessor State, be it a juridical or natural person. Other members, however, favoured subparagraph (b) in view of the volume and importance of the credit currently extended to States from foreign private sources.”

At the beginning of the next sentence, the word “besides” should be deleted.

It was so decided.

Paragraphs (44) and (45), as amended, were approved.

The commentary to article 16, as amended, was approved.

Commentary to article 17 (Obligations of the successor State in respect of State debts passing to it)

The commentary to article 17 was approved.

Commentary to article 18 (Effects of the passing of State debts with regard to creditors)

The commentary to article 18 was approved.

Commentary to the introduction to section 2 (Provisions relating to each type of succession of States)

The commentary to the introduction to section 2 was approved.

Commentary to article 19 (Transfer of part of the territory of a State)

The commentary to article 19 was approved.

Commentary to article 20 (Newly independent State)

The commentary to article 20 was approved.¹

Commentary to article 21 (Uniting of States)

The commentary to article 21 was approved.

Commentary to article 22 (Separation of part or parts of the territory of a State) *and article 23* (Dissolution of a State)

Paragraphs (1)-(5)

Paragraphs (1)-(5) were approved.

Paragraph (6)

5. Mr. VEROSTA proposed that, to avoid disputes as to the accuracy of its terms, the phrase “the break-up

of the Belgian-Dutch State (1830)” should be deleted.

It was so decided.

Paragraph (6), as amended, was approved.

Paragraph (7)

Paragraph (7) was approved.

Paragraph (8)

6. Mr. VEROSTA proposed that the first sentence should be deleted and that the beginning of the second sentence should be amended to read: “The ‘Belgian-Dutch question’ of 1830 had necessitated...”.

It was so decided.

Paragraph (8), as amended, was approved.

Paragraphs (9)-(22)

Paragraphs (9)-(22) were approved.

Paragraph (23)

7. Mr. VEROSTA objected to the use of the expression “the Belgian-Dutch State”, in the fifth sentence.

8. The CHAIRMAN suggested that Mr. Riphagen and Mr. Verosta should be asked to provide the Commission, at its next meeting, with an alternative to that expression.

It was so decided.

Paragraphs (24) and (25)

Paragraphs (24) and (25) were approved.

Paragraph (26)

9. The CHAIRMAN suggested that Mr. Riphagen and Mr. Verosta should be requested to provide the Commission with an alternative to the phrase “the break-up of the Kingdom of the Netherlands”, which appeared in the second sentence.

It was so decided.

Paragraphs (27)-(29)

Paragraphs (27)-(29) were approved.

CHAPTER III. State responsibility (*continued*) (A/CN.4/L.303 and Add.1-6)

B. Draft articles on State responsibility (*continued*) (A/CN.4/L.303 and Add.1-6)

2. TEXT OF ARTICLES 28-32, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTY-FIRST SESSION (A/CN.4/L.303/Add.1-6)

Commentary to article 28 (Responsibility of a State for an internationally wrongful act of another State) (A/CN.4/L.303/Add.1)

Paragraphs (1)-(17)

Paragraphs (1)-(17) were approved.

Paragraph 18

10. Mr. USHAKOV proposed that the last part of the last foot-note to paragraph (18), following the words “committed by it”, should be replaced by the words “since the organization of the federal State cannot be considered as entailing the Member State’s submission

¹ See also 1583rd meeting, paras. 4-7.

to the power of direction or control of the federal State". In his view, there was no subordination in the organization of a federal State.

It was so decided.

Paragraph (18), as amended, was approved.

Paragraphs (19)-(37)

Paragraphs (19)-(37) were approved.

The commentary to article 28, as amended, was approved.

Commentary to the introduction to chapter V (Circumstances precluding wrongfulness) (A/CN.4/L.303/Add.2)

The commentary to the introduction to chapter V was approved.

Commentary to article 29 (Consent) (A/CN.4/L.303/Add.3)

The commentary to article 29 was approved.

Commentary to article 30 (Countermeasures in respect of an internationally wrongful act) (A/CN.4/L.303/Add.4)

The commentary to article 30 was approved.

Commentary to article 32 (Distress) (A/CN.4/L.303/Add.6)

Paragraph (1)

Paragraph (1) was approved.

Paragraphs (2)-(13)

11. Mr. TSURUOKA observed that paragraph (2) contained a reference to draft article 31. He reminded members that he had already drawn attention to some confusion in the various uses of the words "conduct" and "act". He recommended that the Commission remain vigilant on that point, for although homogeneity seemed to prevail from article 3 to article 19, the same did not apply to articles 20, 21 and 31. It might perhaps be desirable to explain the use of those terms clearly in the commentary so as to ensure some degree of concordance in the text as a whole.

12. Mr. AGO explained that paragraph (2) of the commentary referred to article 31 solely in order to point out that, in a situation of *force majeure* or fortuitous event, the conduct of the State was involuntary, whereas an element of will certainly existed in the situation of distress.

Paragraphs (2)-(13) were approved.

Paragraph (14)

13. Replying to a question put by Mr. RIPHAGEN, Mr. AGO explained that, in the commentary to article 31, to which reference was made in paragraph (14) of the commentary to article 32, mention was made of the need to insert in chapter V of the draft a clause stating that preclusion of the wrongfulness of an act of a State by reason of the circumstances of its commission did not affect the possible responsibility of the State on grounds other than the act, whose wrongfulness was precluded by the provisions of the draft articles.

14. Mr. USHAKOV thought the Commission should resume consideration of article 32 when it examined the draft provisions on state of emergency, because it was distress of the State that gave rise to emergency.

He noted that there was a tendency to introduce two separate concepts of distress, that of the State organ and that of the State itself, and that such a dichotomy might cause difficulties.

15. Mr. AGO pointed out that he had already inserted some comments along those lines in the relevant chapter, and that he intended to go into the two types of situation in the commentary in due course.

Paragraph (14) was approved.

The commentary to article 32 was approved.

CHAPTER VIII. Review of the multilateral treaty-making process (A/CN.4/L.308)

Chapter VIII was adopted.

The meeting rose at 12.50 p.m.

1583rd MEETING

Friday, 3 August 1979, at 10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Dadzie, Mr. Diaz González, Mr. Pinto, Mr. Riphagen, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Also present: Mr. Ago.

Draft report of the Commission on the work of its thirty-first session (concluded)

CHAPTER II. Succession of States in respect of matters other than treaties (concluded) (A/CN.4/L.302 and Add.1-4)

B. Draft articles on succession of States in respect of matters other than treaties (concluded) (A/CN.4/L.302/Add.1-3)

PART III (STATE DEBTS) (concluded)

Commentary to article 22 (Separation of part or parts of the territory of a State) and article 23 (Dissolution of a State) (concluded)

Paragraphs (23) and (26) (concluded)

1. The CHAIRMAN reminded members that at the previous meeting Mr. Riphagen and Mr. Verosta had been requested to find adequate wording for the passages of paragraphs (23) and (26) relating to the Netherlands and Belgium.

2. Those two members of the Commission proposed that the words "the case of the dissolution of the Belgian-Dutch State where the two successor States refused", appearing in the fifth sentence of paragraph (23), should be replaced by the words "the already quoted case of 1830/1839, where the Nether-