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Summary record of the 1873rd meeting

Topic:
Other topics

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having been discussed in plenary. Had it been, he would have commented on the subject. The Commission was dealing with the non-navigational uses of international watercourses, and their impact on navigational uses had admittedly to be borne in mind, but draft article 2 already covered that point. The new sentence would raise a whole new set of problems, including the right to participate in negotiations on navigational as well as non-navigational uses.

53. Mr. EVENSEN (Special Rapporteur) said that the sentence in question had been an afterthought and that he had no objection to its deletion.

54. The CHAIRMAN noted that the new sentence had been withdrawn.

Paragraph 41 was adopted.

Paragraphs 42 and 43

Paragraphs 42 and 43 were adopted.

Paragraph 44

55. Sir Ian SINCLAIR expressed his appreciation for the proposed addition to paragraph 44, after the third sentence (A/CN.4/L.375/Add.1/Corr.1, para. 5). However, the second sentence of the additional text might be amended to read: "It was presumably not the intention that the provisions included in the framework agreement should constitute norms of *jus cogens*."

It was so agreed.

Paragraph 44, as amended, was adopted.

Paragraphs 45 and 46

Paragraphs 45 and 46 were adopted.

CHAPTER VII. State responsibility (A/CN.4/L.376 and Add.1)

A. Introduction (A/CN.4/L.376)

Paragraphs 1 to 6

Paragraphs 1 to 6 were adopted.

Section A was adopted.

The meeting rose at 5.55 p.m.

1873rd MEETING

Thursday, 26 July 1984, at 10.05 a.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Balanda, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Thiam, Mr. Ushakov.

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

CHAPTER VI. The law of the non-navigational uses of international watercourses (concluded) (A/CN.4/L.375 and Add.1 and Add.1/Corr.1 and Add.2)

B. Consideration of the topic at the present session (concluded) (A/CN.4/L.375/Add.1 and Corr.1 and Add.2)

Paragraphs 47 to 81 (A/CN.4/L.375/Add.2)

Paragraphs 47 to 54

Paragraphs 47 to 54 were adopted.

Paragraph 55

1. Sir Ian SINCLAIR proposed the deletion of the last two words, "and unacceptable", of the first sentence, which would thus end with the words "was highly controversial". The concept of "shared natural resources" was undoubtedly highly controversial, but it could not be described as unacceptable, since it had been accepted by several members of the Commission in the past.

It was so agreed.

Paragraph 55, as amended, was adopted.

New paragraph 55 bis

2. Mr. OGISO proposed the insertion of a new paragraph 55 bis, drafted along the following lines:

"Some members thought it should not be excluded that a watercourse agreement for a certain project, such as development of a dam, could be facilitated by using the concept of shared natural resources, if the watercourse States concerned so agreed. Therefore it was suggested that a new paragraph could be added to the effect that: 'To the extent that the watercourse States concerned agree, an agreement for special projects may be made on the basis of the concept of shared natural resources within the framework of that agreement.' The Special Rapporteur, however, thought that the introduction of such a provision might become a cause of confusion."

The aim was to take note of a proposal which had not met with a positive response on the part of the Special Rapporteur.

3. Mr. EVENSEN (Special Rapporteur) said that the new paragraph was acceptable, but that the last sentence should be amended to state that the Special Rapporteur had considered the proposal to be unnecessary.

It was so agreed.

New paragraph 55 bis, as amended, was adopted.

Paragraphs 56 to 60

Paragraphs 56 to 60 were adopted.

Paragraph 61

4. Mr. BALANDA proposed that the words "territorial sovereign", in the penultimate sentence, should be replaced by "territorial State".

It was so agreed.

Paragraph 61, as amended, was adopted.

Paragraphs 62 to 81

Paragraphs 62 to 81 were adopted.

5. Mr. OGISO noted that chapter VI made no reference to any of the articles following article 9. Did the Special Rapporteur intend to reformulate them, or to re-submit them in their existing form?

6. Mr. EVENSEN (Special Rapporteur) said it was not his intention to alter the articles in question. The comments made on them during the debate had not been sufficiently penetrating to warrant inclusion in the report.

7. The CHAIRMAN suggested the insertion at a suitable place—possibly in paragraph 32—of a sentence stating that the Special Rapporteur had confined his comments to articles 1 to 9. In that way, readers would not wonder about the other articles.

It was so agreed.

Section B, as amended, was adopted.

Chapter VI of the draft report, as amended, was adopted.

CHAPTER VII. State responsibility (concluded) (A/CN.4/L.376 and Add.1)

B. Consideration of the topic at the present session (A/CN.4/L.376/Add.1)

Paragraph 1 to 30

Paragraphs 1 to 30 were adopted.

New paragraph 30 bis

8. Sir Ian SINCLAIR proposed the insertion of a new paragraph 30 bis along the following lines:

“In conclusion, several members commented generally that the submission of this new set of draft articles marked a major breakthrough in the consideration of part 2 of the topic by the Commission. It should enable the Commission to make progress in the drafting of articles within a measurable time-scale.”

It was so agreed.

New paragraph 30 bis was adopted.

Paragraph 31

Paragraph 31 was adopted.

Section B, as amended, was adopted.

Chapter VII of the draft report, as amended, was adopted.

CHAPTER V. International liability for injurious consequences arising out of acts not prohibited by international law (A/CN.4/L.374 and Add.1)

A. Introduction (A/CN.4/L.374)

Paragraphs 1 to 6

Paragraphs 1 to 6 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session (A/CN.4/L.374 and Add.1)

Paragraphs 7 to 22 (A/CN.4/L.374)

Paragraph 7

Paragraph 7 was adopted.

Paragraph 8

9. Mr. BALANDA said that the paragraph began with an unusual sentence: “Most Commission members who were present took part in the debate.” The sentence should be deleted and the next sentence should start with the words: “In the debate, some members devoted...”

10. Mr. QUENTIN-BAXTER (Special Rapporteur) said that previous reports had occasionally included information on the extent of participation in a debate. Information of that kind was useful to the Sixth Committee of the General Assembly.

11. The CHAIRMAN, speaking as a member of the Commission, pointed out that, if the first sentence were retained, particulars of that sort would have to be given in other parts of the report. The best course would be to delete it. Representatives in the Sixth Committee could obtain information on the participation in a debate by perusing the summary records of the Commission.

The amendment proposed by Mr. Balanda was adopted.

Paragraph 8, as amended, was adopted.

Paragraphs 9 to 22

Paragraphs 9 to 22 were adopted.

Paragraphs 23 to 43 (A/CN.4/L.374/Add.1)

Paragraphs 23 to 30

Paragraphs 23 to 30 were adopted.

Paragraph 31

12. Mr. RIPHAGEN, supported by Mr. DÍAZ GONZÁLEZ, proposed the deletion of the last sentence, “No dissenting view was expressed in the Commission’s debate”, since it conveyed an inaccurate impression of unanimity.

It was so agreed.

Paragraph 31, as amended, was adopted.

Paragraphs 32 to 41

Paragraphs 32 to 41 were adopted.

Paragraph 42

13. Sir Ian SINCLAIR proposed that the somewhat inappropriate words, “contained a note of pleasant surprise”, in the first sentence, should be replaced by “raised a point of particular interest”.

It was so agreed.

Paragraph 42, as amended, was adopted.

Paragraph 43

Paragraph 43 was adopted.

Section B, as amended, was adopted.

Chapter V of the draft report, as amended, was adopted.

The meeting rose at 11.20 a.m.

1874th MEETING

Thursday, 26 July 1984, at 3.25 p.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Balanda, Mr. Evensen, Mr. Francis, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov.

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

CHAPTER IV. Jurisdictional immunities of States and their property (concluded)* (A/CN.4/L.373 and Corr.1 and Add.1 and 2)

B. Draft articles on jurisdictional immunities of States and their property (A/CN.4/L.373/Add.1 and 2)

SUBSECTION 1 (TEXTS OF THE DRAFT ARTICLES PROVISIONALLY ADOPTED SO FAR BY THE COMMISSION) (A/CN.4/L.373/Add.1)

Section B.1 was adopted.

SUBSECTION 2 (TEXTS OF ARTICLES 13, 14, 16, 17 AND 18, WITH COMMENTARIES THERETO, PROVISIONALLY ADOPTED BY THE COMMISSION AT ITS THIRTY-SIXTH SESSION) (A/CN.4/L.373/Add.2)

Commentary to article 13 (Contracts of employment)

Paragraph (1)

1. Mr. SUCHARITKUL (Special Rapporteur) pointed out that the words “This exception is a logical sequence following”, at the beginning of the second sentence, should be replaced by “This exception follows logically from”.

2. Mr. BALANDA, referring to the expression “significant exception”, in the first sentence, said he failed to see the need to qualify any of the exceptions as “significant”. All exceptions to State immunity had the same standing, regardless of subject-matter. The adjective “significant” should therefore be deleted.

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were approved.

Paragraph (4)

3. Sir IAN SINCLAIR proposed that the words “special laws”, in the first sentence, should be replaced by “respective laws”.

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraph (5)

4. Sir Ian SINCLAIR, referring to the second sentence, proposed that the words “liquidation money” should be replaced by “compensation”.

It was so agreed.

Paragraph (5), as amended, was approved.

Paragraphs (6) to (10)

Paragraphs (6) to (10) were approved.

Paragraph (11)

5. Mr. MAHIOU proposed that the words “Higher officials”, at the beginning of the third sentence, should be replaced by “Officials”.

It was so agreed.

Paragraph (11), as amended, was approved.

Paragraph (12)

Paragraph (12) was approved.

Paragraph (13)

6. Sir Ian SINCLAIR proposed the deletion, in the third sentence, of the words “the desirability and opportunity”.

It was so agreed.

Paragraph (13), as amended, was approved.

Paragraph (14)

7. Mr. MAHIOU, referring to the last sentence of the French version, proposed that the words *le droit à impliquer* should be replaced by *le droit à appliquer*.

It was so agreed.

8. Mr. BALANDA, referring to the first sentence of the French version, proposed that the words *une autre sauvegarde* should be replaced by *une autre mesure de sauvegarde*.

It was so agreed.

Paragraph (14), as amended, was approved.

Paragraphs (15) and (16)

Paragraphs (15) and (16) were approved.

Paragraph (17)

9. Mr. THIAM proposed the deletion, in the first sentence, of the words “the substance of”.

It was so agreed.

Paragraph (17), as amended, was approved.

* Resumed from the 1872nd meeting.