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Summary record of the 1874th meeting

Topic:
Other topics

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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. Lacleta 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.

* Resumed from the 1872nd meeting.

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.

The commentary to article 13, as amended, was approved.

Commentary to article 14 (Personal injuries and damage to property)
Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

10. Mr. SUCHARITKUL (Special Rapporteur) pointed out that the words "responsible under international law and", in the first sentence, should be deleted.

Paragraph (2), as amended, was approved.

Paragraph (3)

Paragraph (3) was approved.

Paragraph (4)

11. Mr. THIAM said that the first sentence was puzzling, for it appeared to suggest that only physical damage resulting in death was insurable. In point of fact, death was an insurable risk. He therefore proposed that the sentence should be reworded along the following lines: "Furthermore, the physical injury to the person or the damage to tangible property, resulting in death..."

It was so agreed.

12. Mr. LACLETA MUÑOZ pointed out that, in the Spanish version, the words *los atentados contra la integridad física* did not reflect the idea of an accident underlying the provisions of article 14. The passage should be appropriately reworded in Spanish. In addition, a comma should be inserted between the words *que originan la muerte* and the words *o los daños*.

It was so agreed.

13. Mr. KOROMA said that the drafting of the second sentence of the paragraph should be reviewed by the secretariat.

14. Mr. LACLETA MUÑOZ said that, in the Spanish version at least, the last part of the penultimate sentence was inaccurate in that it spoke of *responsabilidad pública* with reference to insurance companies.

15. Mr. THIAM said that the same comment applied to the French text, which spoke of an insurance company's *responsabilité publique* towards the injured individuals. The liability in question could only be a civil liability.

16. Mr. McCAFFREY said that the words "public responsibility" were intended to refer to the insurance companies' general responsibilities towards the public, which explained the strict government control exercised over them in most countries in order to protect the insured. The subsequent words, namely "and liability to the injured individuals", referred to liability at civil law in the technical legal sense.

17. Sir Ian SINCLAIR, supported by Mr. MAHIOU, proposed the deletion of the words "public responsibility and", so that the penultimate sentence would end with the words "and evading its liability to the injured individuals".

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraphs (5) to (10)

Paragraphs (5) to (10) were approved.

The commentary to article 14, as amended, was approved.

Commentary to article 16 (Patents, trade marks and intellectual or industrial property)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

18. Mr. SUCHARITKUL (Special Rapporteur) pointed out that the word "One", at the beginning of both the first and second sentences, should be replaced by "The".

Paragraph (2), as amended, was approved.

Paragraph (3)

19. Mr. SUCHARITKUL (Special Rapporteur) pointed out that, in the sixth sentence, the word "more" should be inserted before "clearly intellectual".

20. Sir Ian SINCLAIR, referring to the end of the third sentence, proposed that the word "property" should be inserted between the words "industrial" and "rights".

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraph (4)

Paragraph (4) was approved.

Paragraph (5)

Sir Ian SINCLAIR proposed that the word "sanctity", in the fourth sentence, should be replaced by "scope".

It was so agreed.

22. Mr. LACLETA MUÑOZ proposed that, in the Spanish version, the word *llenar*, in the second sentence, should be replaced by *cumplimentar*.

It was so agreed.

Paragraph (5), as amended, was approved.

Paragraphs (6) and (7)

Paragraphs (6) and (7) were approved.

Paragraph (8)

23. Mr. LACLETA MUÑOZ proposed the insertion, in the first part of the second sentence, of the word "necessarily" between the words "does not" and "have".

It was so agreed.

Paragraph (8), as amended, was approved.

Paragraph (9)

24. Sir Ian SINCLAIR proposed that the words "This article contains", at the beginning of the paragraph, should be replaced by "This article expresses".

It was so agreed.

25. Sir Ian SINCLAIR further proposed the deletion, at the end of the paragraph, of the words “as they find them”.

26. Mr. McCAFFREY said that it would be preferable to replace the words “as they find them in” by “in accordance with”.

It was so agreed.

Paragraph (9), as amended, was approved.

Paragraph (10)

27. Mr. McCAFFREY said that the second sentence should be redrafted so as to avoid the use of the passive voice. It could be worded: “The Special Rapporteur suggested...”, followed by a statement that the Commission had adopted the suggestion.

It was so agreed.

Paragraph (10), as amended, was approved.

Paragraph (11)

28. Sir Ian SINCLAIR proposed that, in the second sentence, the words “the exception to State immunity in this article is confined, in the territorial scope, to the State of the forum”, should be replaced by “the exception to State immunity in subparagraph (b) of this article is confined to infringements occurring in the State of the forum”.

29. Mr. LACLETA MUÑOZ pointed out that, in the Spanish version of the same sentence, the words *la aplicación a la excepción* should read: *la aplicación de la excepción*.

It was so agreed.

Paragraph (11), as amended, was approved.

Paragraph (12)

30. Mr. KOROMA said that the words “A few members”, at the beginning of the first sentence, should be replaced by “Some members”. As he recalled, many members had expressed the reservations in question. Again, in the second sentence, the words “so as to give greater priority to” should be replaced by “so as not to hinder”.

31. Mr. BALANDA supported the suggestion to amend the second sentence and proposed that, in the French text, the words *pour donner plus de poids aux besoins des pays en développement* should be replaced by *pour mieux tenir compte des besoins des pays en développement*.

32. Sir Ian SINCLAIR proposed that the relevant passage in the second sentence should be amended to read: “... so as to take more fully into account the needs of ...”. The opening words of the paragraph would read: “Some members”.

It was so agreed.

Paragraph (12), as amended, was approved.

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

Commentary to article 17 (Fiscal matters)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were approved.

Paragraph (5)

33. Sir Ian SINCLAIR, referring to the first sentence, pointed out that it was inaccurate to speak of “the immunities or privileges” when the example given was that of a reduced tariff, which did not constitute an immunity. The words in question should be replaced by “exemptions or special privileges such as nil or reduced tariffs”.

It was so agreed.

Paragraph (5), as amended, was approved.

Paragraph (6)

34. Mr. KOROMA proposed that the words “A few members”, at the beginning of the first sentence, should be replaced by “Some members”.

It was so agreed.

35. Mr. BALANDA pointed out that the use in French of the expression *Plusieurs membres* reflected the real position.

Paragraph (6), as amended, was approved.

The commentary to article 17, as amended, was approved.

Commentary to article 18 (Participation in companies or other collective bodies)

Paragraphs (1) to (6)

Paragraphs (1) to (6) were approved.

Paragraph (7)

36. Mr. RIPHAGEN said that the first two sentences were confusing. They did not seem to reflect correctly the legal position regarding incorporated bodies and unincorporated bodies constituted under the laws of the State of the forum.

37. After a brief discussion in which Mr. SUCHARITKUL (Special Rapporteur) and Mr. McCAFFREY took part, Sir Ian SINCLAIR proposed that the first two sentences should be merged so as to read: “Secondly, the body in question must be incorporated or constituted under the law of the State of the forum, or be controlled from, or have its seat or principal place of business in that State.”

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraph (8)

Paragraph (8) was approved.

Paragraph (9)

38. Sir Ian SINCLAIR proposed that the third sentence should be reworded to read: “One of the three links

based on substantial territorial connection with the State of the forum must be established to warrant ...”.

It was so agreed.

Paragraph (9), as amended, was approved.

Paragraphs (10) and (11)

Paragraphs (10) and (11) were approved.

Paragraph (12)

39. Sir Ian SINCLAIR proposed the deletion of the fourth sentence, beginning with the words “Paragraph 2 is not at all affected”.

It was so agreed.

Paragraph (12), as amended, was approved.

Paragraph (13)

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

It was so agreed.

41. Mr. MAHIU proposed that the words “A few members”, at the beginning of the first sentence, should be replaced by “Some members”.

It was so agreed.

42. Sir Ian SINCLAIR proposed the insertion at the end of the paragraph of a sentence to indicate that the Commission had decided to look more closely at the terminology of article 18 on second reading.

It was so agreed.

Paragraph (13), as amended, was approved.

The commentary to article 18, as amended, was approved.

Section B.2, as amended, was adopted.

Section B, as amended, was adopted.

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

CHAPTER VIII. Other decisions and conclusions of the Commission (A/CN.4/L.377)

43. The CHAIRMAN invited the Commission to consider chapter VIII of the draft report (A/CN.4/L.377), paragraph by paragraph.

Paragraphs 1 to 4

Paragraphs 1 to 4 were adopted.

Paragraph 5

44. Mr. McCAFFREY noted that the last sentence contained an idea that also appeared in other places in the report, namely the need for the Commission to make progress in adopting draft articles. In that connection, it was necessary to emphasize the necessity for not only quantitative but also qualitative achievement. Accordingly, the words “taking into account the importance of each topic” should be inserted at the end of the last sentence.

It was so agreed.

Paragraph 5, as amended, was adopted.

Paragraphs 6 to 41

Paragraphs 6 to 41 were adopted.

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

The draft report of the Commission on the work of its thirty-sixth session as a whole, as amended, was adopted.

Closure of the session

45. After an exchange of congratulations and thanks, the CHAIRMAN declared the thirty-sixth session of the International Law Commission closed.

The meeting rose at 6 p.m.