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Summary record of the 671st meeting

Topic:
Other topics

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new article 7. He had already had occasion to give the reason for his objection in detail.

99. Mr. TSURUOKA said that he too endorsed the views expressed by Mr. Briggs, Sir Humphrey Waldock, Mr. Gros and Mr. Cadieux.

100. The CHAIRMAN called for a vote on the new text of article 7.

Article 7 was adopted by 12 votes to 5.

101. Mr. BARTOŠ said that, although he had been out of the room when the vote was taken he was in favour of the new text of article 7.

102. Mr. CASTRÉN said there was an error in paragraph 3 (a) of article 7 bis where the reference to paragraph 2 was unnecessary, since no mention of the cases referred to in paragraph 2 was made in the remainder of paragraph 3.

103. Sir Humphrey WALDOCK, Special Rapporteur, said that the provisions of paragraph 3 did in fact cover both paragraphs 1 and 2, but paragraph 3 (a) contained an error, in that the words "general multilateral" had been inadvertently allowed to remain. The error should be corrected.

104. Mr. ROSENNE suggested that Mr. Castrén's point might be met by inserting the words "and paragraph 2" after the words "under sub-paragraph 1 (a)" in sub-paragraph 3 (a) (i).

It was so agreed.

105. The CHAIRMAN called for a vote on article 7 bis, as thus amended by the special rapporteur and Mr. Rosenne.

Article 7 bis, as thus amended, was adopted by 16 votes to 1 with 1 abstention.

The meeting rose at 12.45 p.m.

671st MEETING

Thursday, 28 June 1962, at 4 p.m.

Chairman: Mr. Radhabinod PAL

Draft report of the Commission on the work of its fourteenth session (resumed from the previous meeting)

CHAPTER III.—FUTURE WORK IN THE FIELD OF THE CODIFICATION AND PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW (A/CN.4/L.101/Add.2)

1. The CHAIRMAN invited the Commission to consider chapter III of the draft report; the paragraphs were not numbered.

Introductory portion

The introductory portion was adopted without comment

Section I

Law of treaties

2. Mr. de LUNA said that some reference should be made to the fact that, at the current session, the Commission had dealt with the conclusion of treaties.

3. Mr. AMADO said he disliked the first sentence, which stated: "The General Assembly recommendation regarding this topic did not give rise to any difficulty." It would be better to omit it altogether and go straight to the subject matter of the paragraph.

4. Mr. VERDROSS said the report should also mention that, at subsequent sessions, the Commission would deal with aspects of the law of treaties other than the conclusion of treaties.

5. Mr. LIANG, Secretary to the Commission, said that that question was dealt with in chapter IV, on the future work of the Commission.

6. Mr. BARTOŠ said he supported Mr. Amado's suggestion regarding the first sentence, as well as the suggestions of Mr. de Luna and Mr. Verdross to include a brief reference to the facts of the situation.

7. Mr. LACHS, Rapporteur, said he could accept all those suggestions; the draft would be amended accordingly.

The sub-section on the law of treaties, as thus amended, was adopted.

State responsibility

8. Mr. CADIEUX said that, although the English text of the first sentence, which constituted the first paragraph, "The Commission duly discussed this topic", did not correspond with the French original, which stated that the Commission had discussed the topic "thoroughly", it was a more prudent statement. The Commission could hardly claim to have had a thorough discussion of the topic of state responsibility.

9. The next seven paragraphs showed a lack of balance in the recital of the arguments on the topic of the treatment of aliens. Five long paragraphs were devoted to the arguments in favour of dissociating the topic of state responsibility from that of the treatment of aliens, but only two short paragraphs to the arguments of those who held that the treatment of aliens was an important topic which deserved priority, and that the law on the treatment of aliens was a mine of information on the subject of state responsibility.

10. He hoped the rapporteur would redraft those paragraphs so as to restore the balance.

11. The last two paragraphs, the sixteenth and seventeenth, should be brought into line not only with each other, but also with the decisions adopted by the Commission.

12. In the last paragraph, he noted the expression "State responsibility *per se*". That seemed to him a novel expression, and he would be glad to have an explanation of its meaning.

13. Mr. GROS, referring to Mr. Cadieux's last remark, said the best solution might be to delete the words "the state responsibility *per se*, that is," so that the opening words of the last paragraph would read: "The Commission approved a suggestion that the sub-committee should confine its future discussions to the general aspects of state responsibility..."

14. Mr. BARTOŠ said he agreed with Mr. Cadieux that the first paragraph might give the impression that the Commission had discussed thoroughly the substance of the question of state responsibility whereas in fact it had done little more than discuss the approach to the topic.

15. Mr. BRIGGS said he supported the views of Mr. Cadieux concerning the necessity of keeping a proper balance in the exposition of the different views put forward by members of the Commission.

16. In the third paragraph, he proposed that the passage reading: "the reports of the preceding special rapporteur, who is no longer a member of the Commission, having been prepared without any guidance from the Commission, reflected exclusively his personal views; the reports (it was said) could not in any case serve as a basis for the Commission's work," should be amended to read: "The reports of the preceding special rapporteur, who is no longer a member of the Commission, could not serve as a basis for the Commission's work...". That amendment would eliminate the criticism of the work of the former special rapporteur.

17. Mr. ROSENNE, with regard to the reference in the thirteenth paragraph to the methods of work of the Institute of International Law, which the Commission had not adopted, said the inclusion of that reference made it necessary to state the reasons why the Commission had decided not to adopt the same methods of work as the Institute.

18. Mr. AGO suggested that the first paragraph should be redrafted to read "The Commission devoted a number of days to the preliminary study of this topic".

19. In the second paragraph, the words "the specific points" should be replaced by the words "the matters".

20. He too agreed with Mr. Cadieux on the need to restore the balance in the recital of the various views expressed in the Commission.

21. He supported Mr. Briggs' proposal for the deletion of the passage in the third paragraph, which might be considered discourteous to a former member of the Commission.

22. In the fourth paragraph, the first two sentences should be shortened to read: "Other members pointed out that state responsibility was an extremely complex subject and covered such a large part of international law...".

23. Lastly, in the first sentence of the sixth paragraph, the passage reading "the treatment of aliens was not the only problem of international responsibility..." should be amended to read: "...responsibility for injury to aliens was not the only problem of international responsibility...". A similar change would have to be made at other points in the draft.

24. Mr. TUNKIN said he was puzzled by the sentence in the seventh paragraph which read, "The treatment of aliens should not be dealt with merely from the point of view of breaches of international law".

25. In the tenth paragraph there was a reference to a suggestion that "the Commission ought to appoint

several rapporteurs, each of whom would study a particular aspect" of state responsibility. He did not recall any suggestion to that effect having been made in the Commission.

26. Nor did he recall that the Commission had ever given the directive indicated in the last paragraph "that the sub-committee should confine its future discussions to state responsibility *per se*, that is, to the general aspects of state responsibility as the consequence of the violation of the rules of international law".

27. The passage in question should be replaced by language similar to that used in the second sentence of the sixth paragraph of the next portion of the chapter, dealing with succession of states and governments, which read:

"The task of the sub-committee was to submit to the Commission a preliminary report containing suggestions on the scope of the subject, the method of approach for a study and the means of providing the necessary documentation".

28. Mr. CASTRÉN proposed that in the French text of the fourth paragraph the word "*extrêmement*" before the word "*douteux*" should be deleted; the French would correspond more closely to the English wording "hardly possible", which was to be preferred.

29. Mr. BRIGGS said he supported Mr. Tunkin's remarks regarding the seventh and the last paragraphs.

30. The CHAIRMAN said that it was for the sub-committee to define the scope of the topic of state responsibility, and that no directives had been given to it by the Commission itself.

31. Mr. LACHS, Rapporteur, said that he would gladly meet the wishes of Mr. Cadieux and Mr. Briggs, if he were given some indication of the arguments which it was desired to include.

32. He was also prepared to amend the sentence in the seventh paragraph which had been criticised by Mr. Tunkin.

33. As to Mr. Rosenne's point regarding the thirteenth paragraph, it might be better to drop the reference to the Institute of International Law rather than attempt to give an account of its methods of work and of the reasons why they had not been adopted by the Commission.

34. The last paragraph could be amended as requested by Mr. Tunkin and Mr. Briggs.

35. Mr. CADIEUX, in reply to the rapporteur, said that the main arguments put forward in the Commission in support of a study of the topic of the treatment of aliens had been, first, the urgency of considering the question of damages to aliens and, secondly, the importance of the subject for new countries which wished to encourage the movement of persons and capital.

36. Mr. LACHS, Rapporteur, said that he would add two paragraphs to deal with those arguments.

37. Mr. AGO suggested that the sentence criticized by Mr. Tunkin in the seventh paragraph should be amended, subject to the approval of the rapporteur, to read:

"The question of the treatment of aliens should not be dealt with solely from the point of view of the responsibility for possible breaches of the rules of international law governing the matter; it was necessary first to establish what were the substantive rules on that matter."

38. The CHAIRMAN said that, if there were no objection, he would consider that the Commission adopted the sub-section on state responsibility with the changes accepted by the general rapporteur.

The sub-section in state responsibility, as thus amended, was adopted.

Succession of states and governments

39. Mr. AMADO said that the drafting of the first sentence in the second paragraph was not satisfactory, particularly the passage: "though they were not so pessimistic as to believe that it would be impossible..."

40. Mr. LACHS, Rapporteur, suggested as an alternative wording "though they were ready to admit that it would be possible".

It was so agreed.

41. Mr. ROSENNE said that the fourth paragraph should mention the conclusion reached by the sub-committee on the succession of states and governments that it would be premature at that stage to take a decision as to whether or not the succession of states and the succession of governments should be treated as two separate topics.

42. Mr. LACHS, Rapporteur, said he would insert an appropriate sentence to that effect.

The sub-section on succession of states and governments, as thus amended, was adopted.

Section II.—The Commission's future programme of work

43. Mr. TUNKIN said that the first paragraph should be amended, so as not to convey the erroneous impression that some members disagreed as to the need to review the programme of work. There had been no disagreement on that point at all, though opinions might have differed about the content of the programme.

44. The first sentence of the fifth paragraph should be amended to state that many of the topics proposed by governments deserved study. As drafted, the sentence seemed to question the utility of the topics put forward.

45. Mr. de LUNA, referring to the third sentence in the fifth paragraph, said the report should not be too precise about how long the work on certain topics would take.

46. Mr. CASTRÉN, supporting Mr. Tunkin's criticism of the first sentence in the fifth paragraph, said many of the topics proposed by governments could be usefully codified.

47. The last sentence in the fifth paragraph should be deleted as repetitious.

48. Mr. BRIGGS thought it would be sufficient to say that "some" of the topics proposed by governments could be usefully codified.

49. Mr. ROSENNE said he was afraid that such a statement might be taken amiss: it would be wiser to pass no judgment on the utility of the topics suggested by governments.

50. Mr. LACHS, Rapporteur, said he would redraft the sentence on the lines suggested by Mr. Tunkin.

51. Mr. VERDROSS suggested that the first sentence of the last paragraph should be deleted and the beginning of the second sentence amended accordingly so as to state that, in order to expedite its work the Commission had established two sub-committees, etc.

52. Mr. BRIGGS said that it was the second sentence rather than that should be deleted, because the decision to set up two sub-committees had nothing to do with expediting the Commission's work and would, in fact, delay for a year the appointment of special rapporteurs.

53. Mr. ROSENNE felt that the report should mention the decision to set up two sub-committees, which were to meet before the next session.

54. Possibly also, in conformity with United Nations practice, it should mention that the Commission had had before it a statement by the Secretariat of the financial implications of the appointment of the two sub-committees.

55. Mr. LIANG, Secretary to the Commission, said there was no need to mention the fact that the Commission had had before it a statement of financial implications; that question would, in any event, come up before the Sixth Committee.

56. He agreed with Mr. Rosenne that the decision to establish two sub-committees should be mentioned in the report. As views might differ on the reasons for that decision, the sentence might perhaps be drafted as a simple statement of fact.

57. Mr. EL-ERIAN said he disagreed with Mr. Briggs and Mr. Verdross; the last paragraph should stand as it was because the Commission's methods of work had been criticised in the Sixth Committee. Future criticism might be forestalled by saying that the Commission had again considered how it could improve its methods of work and its decision to establish two sub-committees would perhaps discourage further suggestions that it should be split into two sub-divisions.

58. Mr. GROS considered that the last paragraph should be recast as a plain statement of the fact that the Commission had established two sub-committees; that would indicate to the Sixth Committee that it was anxious to improve its methods of work. Any impression that the situation had been unsatisfactory in the past would be quite erroneous and should be avoided.

59. Mr. LACHS, Rapporteur, said that, having attended the Sixth Committee for many years, he knew the kind of criticism to which the Commission had been subjected and, therefore, believed that some paragraph of the kind under discussion was necessary. However, he agreed that the drafting could be improved and suggested that the first sentence should be replaced by a sentence reading:

“The Commission has, as previously, improved its methods of work with the object of expediting, as far as possible, the study of topics already on its programme.”

That sentence would show that the process of improvement was a continuous one.

60. Mr. AMADO said he saw no necessity to link current discussions about ways of improving methods of work with what had happened in the past. He did not favour the new text proposed by the rapporteur.

61. Mr. CADIEUX said that the last paragraph should be drafted in terms which would avoid any reflection on the Commission's past methods of work.

62. Mr. AGO said he agreed with Mr. Cadieux: excellent work had been accomplished in the past. Still, that did not mean that methods of work could not be further improved. It would suffice simply to indicate that the Commission had decided to set up two sub-committees.

63. Mr. EL-ERIAN emphasized that the Sixth Committee had never questioned the quality of the Commission's work, only its methods. Perhaps the text suggested by the rapporteur might be modified so as to indicate that, as at previous sessions, the Commission had considered how it could improve its work.

64. Mr. BARTOŠ said that, although he had not attended the last session of the General Assembly, he had carefully perused the records of the Sixth Committee and had also been informed by members of the Yugoslav delegation of what had taken place. He had learnt that doubts had again been expressed in the Sixth Committee as to whether the Commission was doing everything possible to improve its work. Any such suggestion should be firmly refuted; in his opinion, the Commission had cause for pride in its past achievements. Nevertheless, the report should mention that methods of work had been discussed and that two sub-committees had been set up with a view to achieving more in the time at the Commission's disposal. Every member was keenly aware of the problem, and that should be clearly reflected in the report.

65. In addition, the situation should be explained orally by the Chairman to the Sixth Committee, which had not fully realised that the process of codifying international law demanded the most meticulous work and a great deal of time; the Commission was not an automatic machine for the mass production of articles. The Sixth Committee should also have explained to it the difficulties with which the Commission had to contend and the unsatisfactory technical organization which interfered with the smooth running of its work.

66. Mr. TABIBI said he agreed with Mr. El-Erian that the Sixth Committee had never questioned the quality of the Commission's work but was only anxious that it should be carried out with greater speed. The last paragraph should be retained and some mention made of the fact that one of the reasons for establishing the sub-committees was to give guidance to the future special rapporteurs.

67. Mention should also be made of the fact that a special rapporteur on special missions had been appointed.

68. Mr. ROSENNE said that in his opinion reference should be made to the Commission's methods of work, but not to the question of improvements. The last paragraph could accordingly be reworded to read: “The Commission had continued to keep under review its method of work with the object of expediting, as far as possible, the study of topics already on its programme”.

69. The substance of the second sentence should be transferred to chapter IV. In that way the establishment of the sub-committees would not be linked with the question of methods of improving the Commission's work.

70. Mr. TUNKIN said that Mr. Rosenne's proposal was acceptable: alternatively a plain statement of the facts, as suggested by Mr. Gros, might be enough.

71. As a former Chairman of the Commission who had attended the Sixth Committee, he was bound to say that he had not gained the impression that the Sixth Committee was dissatisfied with the Commission's methods of work.

72. The CHAIRMAN suggested that the last paragraph should be replaced by a statement mentioning simply the establishment of the two sub-committees.

It was so agreed.

Section II, as thus amended, was adopted.

Chapter III, as amended, was adopted.

CHAPTER IV. — ORGANIZATION OF THE WORK OF THE NEXT SESSION (A/CN.4/L.101/Add.3)

73. The CHAIRMAN invited the Commission to consider chapter IV of the draft report, the title of which had now been changed from “Planning of Future Work of the Commission” to “Organization of the Work of the Next Session”; again the paragraphs were not numbered.

74. Mr. BRIGGS said he disliked the words “State responsibility *per se*” in the second paragraph of section II.

75. Mr. TUNKIN said he thought it would be unwise for the Commission to put on record anything so rigid as decision (2) in the second paragraph of section II; the sentence should be redrafted.

76. In decision (3) in the same section, he thought that the word “reports” did not accurately describe what the members of the Sub-Committee had been asked to prepare. The same applied to decision (3) in the third paragraph of section III.

77. Mr. AGO, Chairman of the Sub-Committee on State Responsibility, suggested that decision (2) in section II might open with the words “Its debates will be mainly devoted to...”, while in decision (3) in the same section, the word “*exposés*” might be more accurate than “reports”.

78. He noticed that no reference was made in the first paragraph of section II to the paper on state responsibility prepared by Mr. Gobbi, the observer for the Inter-

American Juridical Committee; he asked whether it was not customary to refer in the Commission's reports to papers submitted by observers.

79. Mr. LIANG, Secretary to the Commission, said that the question, which was a constitutional one, had never arisen before. When he had acted as observer for the Commission to various inter-governmental bodies, his papers had been unofficial.

80. Mr. BRIGGS suggested that decision (2) in section II should read: "Its debates will be confined to the general aspects of state responsibility".

81. Mr. AGO said he could accept that wording.

82. Mr. TUNKIN said he had some doubts concerning that formulation. The Commission had instructed the Sub-Committees to limit their proposals to the questions of scope and approach. It would consequently be inadvisable to give the impression that a substantive discussion would take place in the Sub-Committee.

83. Mr. AGO pointed out that the Sub-Committee had agreed that its approach to the subject should relate to the general aspects of state responsibility.

84. Mr. TUNKIN said he would not press his point.

85. Mr. LACHS, Rapporteur, observed that the Sub-Committee on State Responsibility was said to have met in "private session", while the Sub-Committee on the Succession of States and Governments was said to have held "two closed meetings". The same terminology should be used in both cases, and he suggested that the words "private meeting" could be used.

86. Mr. ROSENNE thought that reference should be made to the fact that the Secretariat had been requested to prepare a paper on certain aspects of the law of treaties as discussed in the General Assembly.

87. He also thought that, from a constitutional point of view, since certain working papers were mentioned in the Commission's report, they should be circulated to all members of the Commission, and not only to members of the Sub-Committees.

88. Mr. TUNKIN said that, in his view, the working papers should not be circulated to all members of the Commission since they contained informal suggestions only, and other members of the Sub-Committees who would prepare similar papers might be inhibited by the thought that their papers would be circulated to all members.

89. He drew attention to the fact that, according to sections II and III as drafted, the papers on the succession of states and governments were to be submitted by 31 October 1962, while the time-limit for papers on state responsibility was 1 December 1962. He suggested that the date should be 1 December 1962 in both cases.

90. The CHAIRMAN said that the suggestions made by members would be taken into account in the final text of the report.

Chapter IV as thus amended was adopted.

The meeting rose at 5.45 p.m.

672nd MEETING

Friday, 29 June 1962, at 9.30 a.m.

Chairman: Mr. Radhabinod PAL

Law of treaties (A/CN.4/144 and Add.1) (item 1 of the agenda) (*resumed from the 670th meeting and concluded*)

1. The CHAIRMAN invited the Commission to conclude its discussion of item 1 of the agenda, the law of treaties. No decision had yet been taken on article 7 *ter*.

ARTICLE 7 *ter*. — THE PROCEDURE FOR PARTICIPATING IN A TREATY (*resumed from the 660th meeting*)

2. Sir Humphrey WALDOCK, Special Rapporteur, suggested that, in the light of the structure which the Commission had decided to give to article 7 and 7 *bis*, article 7 *ter* might now be omitted.

It was so agreed.

ARTICLE 18 *bis*. — THE EFFECT OF RESERVATIONS

3. Mr. BRIGGS asked that in the report a footnote on the following lines should be inserted in connexion with article 18 *bis*:

"For the reasons given in the summary records of the 637th, 651st, 652nd, 656th and 667th meetings, Mr. Briggs could not accept the provisions of article 18 *bis*."

It was so agreed.

ARTICLE 20. — ENTRY INTO FORCE OF TREATIES

4. Sir Humphrey WALDOCK, Special Rapporteur, said that although article 20 had been adopted at the 668th meeting, the words "if the instruments have been exchanged or deposited by that date" should still be added at the end of paragraph 2 (*a*). A passage explaining that phrase had actually been included in the commentary to the article.

It was so agreed.

5. Sir Humphrey WALDOCK, Special Rapporteur, asked the Commission's authority to make any minor editorial changes that might be necessary as regards the titles of the chapters and, particularly, the place of article 19 *bis* (The rights and obligations of states prior to the entry into force of the treaty) which he thought should be inserted before the articles concerning reservations.

It was so agreed.

Draft report of the Commission on the work of its fourteenth session (*resumed from the previous meeting*)

CHAPTER II. — LAW OF TREATIES (A/CN.4/L.101/Add. 1) (*resumed from the 670th meeting*)

6. The CHAIRMAN invited the Commission to resume its consideration of the commentaries to the draft articles.

COMMENTARIES TO ARTICLES 7. — PARTICIPATION IN A TREATY, and 7 *bis*. — THE OPENING OF A TREATY TO THE PARTICIPATION OF ADDITIONAL STATES

Paragraph (1)

Paragraph (1) was adopted without comment.