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1145th MEETING

Tuesday, 27 July 1971, at 3.15 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Ushakov, Sir Humphrey Waldock.

Co-operation with other bodies

[Item 9 of the agenda]

(continued)

STATEMENT BY THE OBSERVER FOR THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

(continued)

1. The CHAIRMAN asked whether any further members wished to comment on the statement made at the previous meeting by the observer for the European Committee on Legal Co-operation.

2. Mr. AGO said he had been particularly struck by the observer's report on the progress made with the European draft Convention on State Immunity, a subject on which a convention was badly needed. The value of a draft convention on action against the pollution of the major international waterways of western Europe had also long been evident.

3. He welcomed the interest shown by the European Committee on Legal Co-operation in the peaceful uses of the sea-bed and the ocean floor and in the protection of diplomats; the latter was a topic which the Commission had very much to heart. Closer co-operation between the Committee, the Commission and the other United Nations bodies dealing with those matters would be fertile of results.

4. He had been glad to learn that the Vienna Convention on the Law of Treaties was being applied by certain organs of the Council of Europe and had been quoted in a recent judgment of the European Court of Human Rights.[1] The International Court of Justice had also relied on the Vienna Convention in the Namibia case,[2] so it was gratifying to see that it was already regarded as authoritative, even before it had come into force.

5. He congratulated the European Committee on Legal Co-operation on its achievements and wished it every success in its work.

6. Mr. EUSTATHIADES said he wished to associate himself with Mr. Ago's congratulations to the observer for the European Committee on Legal Co-operation on the work which he himself and his Committee had been performing for many years at the Council of Europe; every year it included fresh topics of great interest to the Commission. It would be very helpful if the documentation on the question of pollution prepared by the Council of Europe could be transmitted to the Commission in due course, perhaps at it next session.

7. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said he was grateful to the Commission for the interest it had displayed in his review of topics of mutual interest being studied by the European Committee on Legal Co-operation.

Draft report of the Commission on the work of its twenty-third session

(A/CN.4/L.176; A/CN.4/L.178 and Add.1, 3, 4, 5, 7 and 8)

8. The CHAIRMAN invited the Commission to consider the draft report on the work of its twenty-third session.

Chapter I

ORGANIZATION OF THE SESSION (A/CN.4/L.176)

9. Mr. ROSENNE said he noted that, in the third sentence of paragraph 1, reference was made to "81 draft articles and commentaries thereon". Since there were more than eighty-one draft articles in all, that figure should be corrected.

10. In paragraph 7, which reproduced the Commission's agenda for the session, item 7, which read "Updating of the Commission's long-term programme of work" should be corrected to read "Review of the Commission's long-term programme of work", in accordance with the Commission's decision at the first meeting of the present session.[3]

11. The CHAIRMAN said that, if there were no objection, he would take it that the Commission accepted those corrections.

It was so agreed.

Chapter I, as amended, was approved.

Chapter II

RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS

A. INTRODUCTION (Paragraphs 1 to 50 and 44 *bis*) (A/CN.4/L.178 and Add.1)

12. Mr. ROSENNE said that in paragraph 7 the title of the Secretariat study referred to should be corrected

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[1] See 1144th meeting, para. 48.

[2] See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, para. 94.

[3] See 1087th meeting, para. 40.

in accordance with the edited version of that document.

13. In paragraph 15, he suggested that the words "the provisional draft of twenty-one articles" be amended to read "the provisional draft of those twenty-one articles", so as to establish a connexion with what preceded.

14. In paragraph 29, he suggested that operative paragraph 4 (*a*) of General Assembly resolution 2634 (XXV) be cited in full, because it referred to the debate in the Sixth Committee.

15. In the first sentence of paragraph 30, a number of documents were mentioned. Those documents contained the comments not only of Governments but also of the United Nations Secretariat and of a number of specialized agencies and of the IAEA; the sentence should therefore be corrected accordingly. In the following sentence, the reference to "the written comments of Governments" should be expanded so as to refer to the written comments not only of Governments but also of international organizations.

16. At the end of the paragraph, he suggested that a reference be added to the five papers which had been submitted by the Secretariat in response to the Commission's decision at its 1086th meeting at the previous session.[4]

17. In paragraph 31, he suggested that the first sentence be amended so as to indicate that the Commission had examined the Special Rapporteur's sixth report from its 1088th to its 1110th meeting, and had then considered the report of the Drafting Committee from its 1110th to its 1127th meeting; the following sentences, which referred to the establishment of the Working Group and to the consideration of the Working Group's report, would remain unchanged.

18. In the third sentence of paragraph 33, he suggested that the paraphrase of paragraph (5) of the commentary to articles 4 and 5 as adopted at the twentieth session, be replaced by the actual language of that paragraph (5).

19. In paragraph 34, he was not satisfied with the first sentence, which stated that "the Commission wishes to recall the reasons given by it in favour of the preparation of a convention in the case of the law of treaties". He felt that the Commission should base its decision to adopt the form of a draft convention on its merits. He therefore suggested that the words in question be replaced by some such wording as "The Commission continues to believe that the reasons given by it in favour of the preparation of a convention in the case of the law of treaties are equally applicable to the present case".

20. Finally, in the last sentence of paragraph 42, he suggested that the words "certain rules" be amended to read "certain new rules".

21. Mr. BARTOŠ suggested the insertion at the end of the last sentence of paragraph 49 of a passage reading "and also by States which are not members of the United Nations but are members of a specialized agency".

[4] See *Yearbook of the International Law Commission, 1970*, vol. I, p. 259, 1086th meeting, paras. 31 and 32.

22. The CHAIRMAN said that, if there were no objection, he would take it that the Commission accepted the changes suggested by Mr. Rosenne and Mr. Bartoš.

It was so agreed.

The introduction to Chapter II, as amended, was approved.

COMMENTARIES TO ARTICLES 20 to 30 (A/CN.4/L.178/Add.3)

23. Mr. EL-ERIAN (Special Rapporteur) said that the commentaries to individual draft articles had been prepared on the assumption that the "General Comments" which preceded each of the three parts of the draft in the 1968, 1969 and 1970 reports of the Commission would be included in the present draft in the form of introductory comments.

Commentary to article 20 (General facilities)

The commentary to article 20 was approved.

Commentary to article 21 (Premises and accommodation)

The commentary to article 21 was approved.

Commentary to article 22 (Assistance by the Organization in respect of privileges and immunities)

The commentary to article 22 was approved.

Commentary to article 23 (Inviolability of the premises)

The commentary to article 23 was approved.

Commentary to article 24 (Exemption of the premises from taxation)

The commentary to article 24 was approved.

Commentary to article 25 (Inviolability of archives and documents)

The commentary to article 25 was approved.

Commentary to article 26 (Freedom of movement)

The commentary to article 26 was approved.

Commentary to article 27 (Freedom of communication)

The commentary to article 27 was approved.

Commentary to articles 28 (Personal inviolability) *and 29* (Inviolability of residence and property)

The Commentary to articles 28 and 29 was approved.

Commentary to article 30 (Immunity from jurisdiction)

The commentary to article 30 was approved.

COMMENTARIES TO ARTICLES 31 to 39 (A/CN.4/L.178/Add.4) and to ARTICLE 40 (A/CN.4/L.178/Add.5)

Commentary to article 31 (Waiver of immunity)

24. Mr. ROSENNE said he noted that in paragraph (1) of the commentary to article 31 it was stated that paragraphs 1 to 4 of that article were based "on the provisions" of article 32 of the Vienna Convention on Diplomatic Relations, whereas in paragraph (1) of the commentary to article 32, however, it was stated that that article was "based on" article 33 of that same convention. Elsewhere, one or other of those two expressions was used. He suggested that a uniform formula be used throughout the commentaries unless there was some reason to the contrary.

25. Sir Humphrey WALDOCK said that the reason for the inconsistency to which Mr. Rosenne had drawn attention was that the Working Group had had no time to look over the texts once it had prepared them. They could all do with a little tidying up.

26. In some cases the commentary stated that the article to which it was appended "corresponded to" or "paralleled" a certain article of the Vienna Convention. The reason for using different expressions was that the variation from the Vienna model was not the same in all cases.

The commentary to article 31 was approved.

Commentary to article 32 (Exemption from social security legislation)

The commentary to article 32 was approved.

Commentary to article 33 (Exemption from dues and taxes)

The commentary to article 33 was approved.

Commentary to article 34 (Exemption from personal services)

The commentary to article 34 was approved.

Commentary to article 35 (Exemption from customs duties and inspection)

The commentary to article 35 was approved.

Commentary to article 36 (Privileges and immunities of other persons)

The commentary to article 36 was approved.

Commentary to article 37 (Nationals of the host State and persons permanently resident in the host State)

The commentary to article 37 was approved.

Commentary to article 38 (Duration of privileges and immunities)

The commentary to article 38 was approved.

Commentary to article 38 bis (Professional or commercial activity)

The commentary to article 38 bis *was approved.*

Commentary to article 39 (End of the functions of the head of mission or of a member of the diplomatic staff)

The commentary to article 39 was approved.

Commentary to article 40 (Protection of premises, property and archives)

The commentary to article 40 was approved.

COMMENTARIES TO ARTICLES 50 to 61 (A/CN.4/L.178/Add.7)

Commentary to article 50 (General facilities)

27. Mr. EUSTATHIADES said that the reason stated in paragraph (2) for the replacement of the expression "functions of the delegation" by the expression "tasks of the delegation" was the temporary nature of delegations, whereas the real reason was rather the diversity of their tasks. He hoped that the text of the commentary would be corrected accordingly.

28. Mr. ROSENNE said that he agreed with Mr. Eustathiades's observation, but would go even farther and suggest that the last sentence in paragraph (2) be made the first sentence, and that paragraph (2) as a whole be included as a part of the general introduction to the draft articles.

29. The CHAIRMAN said that those observations would be borne in mind when the text was given its final retouching.

The commentary to article 50 was approved.

Commentary to article 51 (Premises and accommodation)

The commentary to article 51 was approved.

Commentary to article 52 (Assistance in respect of privileges and immunities)

The commentary to article 52 was approved.

Commentary to article 53 (Inviolability of the premises)

The commentary to article 53 was approved.

Commentary to article 54 (Exemption of the premises from taxation)

The commentary to article 54 was approved.

Commentary to article 55 (Inviolability of archives and documents)

The commentary to article 55 was approved.

Commentary to article 56 (Freedom of movement)

The commentary to article 56 was approved.

Commentary to article 57 (Freedom of communication)

The commentary to article 57 was approved.

Commentary to articles 58 (Personal inviolability) *and 59* (Inviolability of private accommodation and property)

The commentary to articles 58 and 59 was approved.

Commentary to article 60 (Immunity from jurisdiction)

The commentary to article 60 was approved.

Commentary to article 61 (Waiver of immunity)

The commentary to article 61 was approved.

COMMENTARIES TO ARTICLES 62 to 70 (A/CN.4/L.178/Add.8)

Commentary to article 62 (Exemption from social security legislation)

The commentary to article 62 was approved.

Commentary to article 63 (Exemption from dues and taxes)

30. Mr. EUSTATHIADES said that he wondered whether it was necessary to retain the last sentence in paragraph (2).

31. Mr. EL-ERIAN (Special Rapporteur) said that his first reaction was that it might be useful.

The commentary to article 63 was approved.

Commentary to article 64 (Exemption from personal services)

The commentary to article 64 was approved.

Commentary to article 65 (Exemption from customs duties and inspection)

The commentary to article 65 was approved.

Commentary to article 66 (Privileges and immunities of other persons)

The commentary to article 66 was approved.

Commentary to article 67 (Nationals of the host State and persons permanently resident in the host State)

The commentary to article 67 was approved.

Commentary to article 68 (Duration of privileges and immunities)

The commentary to article 68 was approved.

Commentary to article 69 (End of the functions of the head of delegation or any other delegate or member of the diplomatic staff)

The commentary to article 69 was approved.

Commentary to article 70 (Protection of premises, property and archives)

The commentary to article 70 was approved.

ARTICLE 113 (Professional activity)

32. Mr. ROSENNE said he hoped that the commentary would include some mention of the fact that the Working Group had decided to drop article 113, on professional activity, and to limit that provision to article 38 *bis*.[5]

33. Mr. EL-ERIAN (Special Rapporteur) suggested that a reference to the deletion of article 113 might be made in a footnote to article 38 *bis*.[6]

The meeting rose at 5.10 p.m.

[5] See 1127th meeting, paras. 18 and 19.

[6] See 1135th meeting, paras. 49 to 63 and footnote 9.

1146th MEETING

Wednesday, 28 July 1971, at 10.20 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Ushakov, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 to 3; A/CN.4/240 and Add.1 to 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.174/Add.6)

[Item 1 of the agenda]

(resumed from the 1142nd meeting)

FIFTH REPORT OF THE WORKING GROUP

(resumed from the 1142nd meeting)

1. The CHAIRMAN said that Mr. Ushakov had some further comments to make on the fifth report of the Working Group (A/CN.4/L.174/Add.6).