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Summary record of the 1147th meeting

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national law, the endowment of an annual lecture would be an appropriate tribute to his memory.

29. Arrangements might perhaps be made to bring out some small publication which would sum up the ideals and thoughts of Gilberto Amado himself.

30. Mr. ROSENNE said he supported that suggestion. He hoped that the publication would include, in addition to some account of Mr. Amado's work in the Sixth Committee and in the Commission, a reference to the fact that he had been a member of the Committee of Seventeen which had drawn up the Statute of the Commission.

31. Mr. ALCÍVAR said that he welcomed the offer by the Brazilian Government to honour the memory of a man who had belonged not only to Brazil but to Latin America as a whole.

32. The CHAIRMAN said it appeared to be generally agreed that the Commission should accept Mr. Elias's proposal and that he (the Chairman) should address a letter of thanks to the Brazilian Government through Mr. Sette Câmara.

The meeting rose at 11.15 a.m.

1147th MEETING

Thursday, 29 July 1971, at 10.15 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, 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.

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

(A/CN.4/L.178/Add.9 to 13; A/CN.4/L.179/Add.3; A/CN.4/L.180/Add.1 and 2; A/CN.4/L.181)

(continued)

Chapter III

Section B. Succession of States in respect of matters other than treaties (A/CN.4/L.179/Add.3)

1. The CHAIRMAN invited the Commission to continue its consideration of its draft report.

2. Sir Humphrey WALDOCK said that the word "transferable", used in the English version of chapter III,

especially in the part under consideration, should be replaced by the term "transmissible", which was more appropriate in connexion with succession.

It was so agreed.

Section B, as amended, was approved.

Chapter III, as amended, was approved.

Chapter II

RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS

COMMENTARIES TO ARTICLES 71 to 78 (A/CN.4/L.178/Add.9)

Commentary to article 71 (Nationality of the members of the mission or the delegation)

The commentary to article 71 was approved.

Commentary to article 72 (Laws concerning acquisition of nationality)

The commentary to article 72 was approved.

Commentary to article 73 (Privileges and immunities in case of multiple functions)

The commentary to article 73 was approved.

Commentary to article 74 (Respect for the laws and regulations of the host State)

The commentary to article 74 was approved.

(Article 75: deleted)

Commentary to article 76 (Entry into the territory of the host State)

The commentary to article 76 was approved.

Commentary to article 77 (Facilities for departure)

The commentary to article 77 was approved.

Commentary to article 78 (Transit through the territory of a third State)

3. Mr. ROSENNE said that the words "with the necessary adjustments and drafting improvements" in paragraph (5) could be read as a criticism of the work of a diplomatic conference. He suggested that they be replaced by the words "with some adjustments and drafting changes".

It was so agreed.

The commentary to article 78, as amended, was approved.

COMMENTARIES TO ARTICLES 79 to 82 (A/CN.4/L.178/Add.10)

Commentary to article 79 (Non-recognition of States or governments or absence of diplomatic or consular relations)

4. Mr. ROSENNE suggested that a brief reference be inserted in paragraph (1) to the relevant passages of the reports of the Sixth Committee to the General Assembly at its twenty-fourth and twenty-fifth sessions (A/7746, para. 22, and A/8147, para. 17), in which specific reference was made to the question of exceptional situations.

It was so agreed.

5. Mr. ROSENNE said that the concluding words of paragraph (3) gave the impression that articles 63 and 74 of the Vienna Convention on the Law of Treaties both dealt with the conclusion, termination and suspension of the operation of treaties. In fact, article 63 was in Part V (Invalidity, termination and suspension of the operation of treaties) of that Convention, while article 74 was in Part VI (Miscellaneous provisions) and was one of the articles which applied to the Convention as a whole.

6. Sir Humphrey WALDOCK said he agreed with Mr. Rosenne. He suggested that the concluding words of paragraph (3) "in connexion with the conclusion, termination and suspension of the operation of treaties" be replaced by the words: "in the law of treaties".

It was so agreed.

The commentary to article 79, as amended, was approved.

Commentary to article 80 (Non-discrimination)

The commentary to article 80 was approved.

Commentary to articles 81 (Consultations between the sending State, the host State and the Organization) *and* *82* (Conciliation)

7. Mr. ROSENNE suggested that, in the penultimate sentence of paragraph (6), the words "at present" should be inserted after the word "could" and before the words "be found among governments". He also suggested that the sentence be moved to the end of the paragraph.

8. The words "is thought desirable" in the penultimate sentence of paragraph (8) should be corrected to read "is thought to be desirable".

9. In paragraph (13), the first sentence did not reflect the idea expressed in paragraph 8 of the article, which was intended to safeguard the procedures on the settlement of disputes contained in any agreement, not merely in existing bilateral or multilateral agreements on privileges and immunities. The words "established by existing bilateral or multilateral agreements" should be replaced by the words "by any other existing bilateral or multilateral agreements between the parties".

It was so agreed.

The commentary to articles 81 and 82, as amended, was approved.

COMMENTARIES TO ARTICLES 5 to 10 (A/CN.4/L.178/Add.11)

Commentary to article 5 (Establishment of missions)

10. Mr. ROSENNE suggested that, in the second sentence of paragraph (5), the words "vital interest" be replaced by the words "great interest".

It was so agreed.

The commentary to article 5, as amended, was approved.

Commentary to article 6 (Functions of the permanent mission)

11. Mr. ROSENNE suggested that, in the penultimate sentence of paragraph (5), the words "significant achievements" be replaced by a more suitable expression, such as "significant features" or "significant developments".

It was so agreed.

12. Mr. ROSENNE said that in the third sentence of paragraph (6), it was stated that, during the discussion of article 6 in the Commission, reference had been made to some exceptional cases in which "the function of diplomatic protection could be performed by the permanent mission". He suggested the deletion of the word "diplomatic" and the addition at the end of the sentence of the words "in connexion with the relations between one of its nationals and the Organization". The passage would then express more accurately the point he had raised during the discussion. It was, of course, true that the cases in which such protection was afforded were rare, as was stated in the fourth sentence of the paragraph.

13. Mr. KEARNEY said that he would prefer that the reference to exceptional cases be omitted. He therefore suggested that the third and fourth sentences of paragraph (6) be deleted.

It was so agreed.

The commentary to article 6, as amended, was approved.

Commentary to article 7 (Functions of the permanent observer mission)

The commentary to article 7 was approved.

Commentary to article 8 (Multiple accreditation or appointment)

The commentary to article 8 was approved.

Commentary to article 9 (Appointment of the members of the mission)

The commentary to article 9 was approved.

Commentary to article 10 (Credentials of the head of mission)

The commentary to article 10 was approved.

COMMENTARIES TO ARTICLES 11 to 15 (A/CN.4/L.178/Add.12)

Commentary to article 11 (Accreditation to organs of the Organization)

The commentary to article 11 was approved.

Commentary to article 12 (Full powers in the conclusion of a treaty with the Organization)

14. Mr. ROSENNE suggested that the definition of the term "full powers" given in article 2, paragraph 1 (c) of the Convention on the Law of Treaties be included in footnote 1.

It was so agreed.

The commentary to article 12, as amended, was approved.

Commentary to article 13 (Composition of the mission)

The commentary to article 13 was approved.

Commentary to article 14 (Size of the mission)

The commentary to article 14 was approved.

Commentary to article 15 (Notifications)

The commentary to article 15 was approved.

COMMENTARIES TO ARTICLES 16 to 19 (A/CN.4/L.178/Add.13)

Commentary to article 16 (Chargé d'affaires *ad interim*)

The commentary to article 16 was approved.

Commentary to article 17 (Precedence)

The commentary to article 17 was approved.

Commentary to article 18 (Office of the mission)

15. Mr. ROSENNE said it was his understanding that "an office of the Organization", referred to in the first sentence of paragraph (1), was not any office of the Organization but the kind of office referred to in paragraph 1 (12) (i) of article 1, on the use of terms.

16. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to approve the commentary to article 18 on that understanding.

The commentary to article 18 was approved.

Commentary to article 19 (Use of flag and emblem)

The commentary to article 19 was approved.

17. Mr. EL-ERIAN (Special Rapporteur) said that reference was sometimes made in the commentaries to the "earlier draft" or the "previous draft". It was his intention to replace those expressions throughout the commentaries by the expression "preliminary draft".

Chapter IV

Section D. Co-operation with other bodies (A/CN.4/L.180/Add.1)

1. Asian-African Legal Consultative Committee

18. Mr. TABIBI suggested that some mention should be made of the report submitted by Mr. Elias on the last session of the Committee. It should also be made clear in paragraph 1 that Mr. Fernando was the Permanent Secretary-General of that Committee.

It was so agreed.

2. European Committee on Legal Co-operation

19. Sir Humphrey WALDOCK suggested that paragraph 1 should include a reference to the fact that he had attended the last session of the Committee as an observer.

It was so agreed.

3. Inter-American Juridical Committee

20. Mr. SETTE CÂMARA said that the words "intellectual property" in the first sentence of paragraph 22 should be replaced by the words "industrial property".

It was so agreed.

Section D, as amended, was approved.

Section E. Date and place of the twenty-fourth session (A/CN.4/L.180/Add.2)

21. Mr. ELIAS suggested that the next session should begin on 2 May 1972.

It was so agreed.

Section E was approved.

Section F. Representation at the twenty-sixth session of the General Assembly (A/CN.4/L.180/Add.2)

Section F was approved.

Section G. Seminar on International Law (A/CN.4/L.180/Add.2)

22. Mr. BARTOŠ suggested that a short sentence should be included in the section on the Seminar on International Law to explain that members of the Commission had delivered their lectures without receiving an honorarium. A few words of congratulation should also be addressed to the Secretariat.

It was so agreed.

23. Mr. TESLENKO (Deputy Secretary to the Commission) said that the second sentence in paragraph 8 should be corrected to read: "In accordance with the wishes expressed during the debates of the Sixth Committee, three young diplomats who had participated in the work of the Committee were admitted to this session of the Seminar".

Section G, as amended, was approved.

Relations between States and international organizations

(A/CN.4/221 and Add.1 and Corr.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.181)

[Item 1 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES ON THE REPRESENTATION OF STATES IN THEIR RELATIONS WITH INTERNATIONAL ORGANIZATIONS

24. The CHAIRMAN invited the Chairman of the Working Group to introduce the draft articles on the representation of States in their relations with international organizations (A/CN.4/L.181).

25. Mr. KEARNEY (Chairman of the Working Group) said that the Secretariat had made certain changes in the text of the draft articles as given in document A/CN.4/L.181 which it wished to bring to the Commission's attention.

26. In view of the new definition of "delegation to a conference" in article 1, paragraph 1 (10), it was proposed that paragraph 1 (19) should be amended to read: "delegate" means any person designated by a State to participate as its representative in the proceedings of an organ or in a conference". The words "... of a conference" would thus be replaced by the words "in a conference".

27. In article 11, paragraph 3, it was proposed to add the word "delegate" after the word "observer" in the phrase "to act as an observer".

28. In articles 17 and 48, it was proposed to replace the words "their States" by the words "the States", in order to bring the English version more closely into line with the French and Spanish versions.

29. In article 60, paragraph 1 (a), and article 63, sub-paragraph (b), it was proposed to replace the word "purpose" by the word "purposes".

30. Mr. ROSENNE said that sub-paragraph (b) of article 4 seemed to differ considerably from the text of that sub-paragraph adopted at the 1135th meeting. He asked why the words "of universal character or their representation at conferences convened by or under the auspices of such organizations" had been added after the words "international organizations".

31. Mr. KEARNEY (Chairman of the Working Group) said that the Working Group had decided to add those

words in order to make it clear that the draft articles also referred to conferences.

32. The CHAIRMAN put to the vote the draft articles on the representation of States in their relations with international organizations (A/CN.4/L.181).

The draft articles were adopted unanimously.

33. The CHAIRMAN said that he wished to express his most sincere thanks to the Special Rapporteur and to the members of the Working Group, without whose efforts that important item of the agenda could not have been successfully completed.

The meeting rose at 12.20 p.m.

1148th MEETING

Friday, 30 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.

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

(A/CN.4/L.178/Add.2, 6, 14 and 15; A/CN.4/L.180/Add.3 to 5)

(continued)

Chapter II

(resumed from the previous meeting)

1. The CHAIRMAN invited the Commission to continue its consideration of chapter II of the draft report.

COMMENTARIES TO ARTICLES 1 to 4 (A/CN.4/L.178/Add.2)

Commentary to article 1 (Use of terms)

2. Mr. ROSENNE said that the word "used" in the first line of paragraph (6) should be replaced by the word "uses".

3. He suggested that paragraph (14) be amended to read: "Paragraph 2 is similar in purpose to paragraph 2 of article 2 of the Vienna Convention on the Law of Treaties".

It was so agreed.