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Summary record of the 1470th meeting

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1470th MEETING

Wednesday, 27 July 1977, at 10.10 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Bedjaoui, Mr. Castañeda, Mr. Dadzie, Mr. Diaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Co-operation with other bodies (*concluded*)*

[Item 10 of the agenda]

1. Mr. EL-ERIAN said that, in accordance with the decisions taken by the Commission at its twenty-eighth session, he had attended the twenty-sixth session of the European Committee on Legal Co-operation, held at Strasbourg (France) in December 1976, and the eighteenth session of the Asian-African Legal Consultative Committee, held at Baghdad (Iraq) in February 1977.

2. The items on the agenda of the European Committee on Legal Co-operation could be divided into three groups: (a) questions relating to co-operation in legal fields, such as family law, legal representation and custody of minors, and obstacles to civil proceedings; (b) questions relating to academic co-operation, in particular with regard to fellowships for European legal studies and research and work on fundamental legal concepts; and (c) questions relating to international law and the activities of international organizations, such as acquisition of nationality, legal aspects of the protection of the environment, legal problems relating to stateless nomads, and the work of international organizations and bodies such as the European Communities and the United Nations (more especially, the International Law Commission, with particular reference to its draft articles on succession of States in respect of treaties).

3. He had made a statement to the Committee in which he had reviewed the Commission's work at its twenty-eighth session. In the ensuing exchange of views, he had been gratified to note that many members of the Committee had shown great interest in the three main items on the Commission's agenda, namely, the most-favoured-nation clause, succession of States in respect of matters other than treaties, and State responsibility. With regard to the last topic, the Commission would be pleased to know that, in response to the conviction expressed by the Commission in its commentary to article 19,¹ the Committee had devoted particular attention to that article, which concerned international crimes and international delicts.

4. It was quite natural that, as the legal organ of the Council of Europe, the Committee should continue to

be interested in the Commission's work. In that connexion, Mr. Golsong, Director of Legal Affairs of the Council of Europe, had prepared a number of reports on the Commission's activities, which had been of great assistance to the members of the Committee.

5. The first item on the agenda of the eighteenth session of the Asian-African Legal Consultative Committee had related to matters arising out of the work of the International Law Commission and, in particular, to the draft articles on succession of States in respect of treaties, some of which he had been able to explain to the Committee during its exchange of views on the subject.

6. The Committee's agenda had also included such international law topics as the law of the sea, including questions relating to the sea-bed and ocean floor, reciprocal assistance in respect of economic offences, international commercial arbitration, international shipping legislation and environmental law. The Committee had had a useful discussion on the law of the sea in preparation for the sixth session of the Third United Nations Conference on the Law of the Sea.

7. The Asian-African Legal Consultative Committee had been especially gratified that observers from Europe, the United States, the Soviet Union, Australia and Latin America had attended its eighteenth session. During the discussions at that session and through the personal contacts he had made, he had seen that the Committee which had previously emphasized work on matters of private international law, was now showing increasing interest in questions of public international law and particularly in the activities of the International Law Commission.

8. With regard to the work of the Inter-American Juridical Committee, which held two sessions every year, he had been unable to attend the first of the 1977 sessions, but he hoped to be able to attend the summer session.

9. The CHAIRMAN said that, since co-operation with other bodies was a very important aspect of the Commission's work, it was a matter for regret that representatives of the European Committee on Legal Co-operation and the Asian-African Legal Consultative Committee had been unable to attend the Commission's current session. In those circumstances, the statement by Mr. El-Erian had been of great interest.

10. The Enlarged Bureau had considered the question of co-operation with other bodies when it had discussed the Commission's programme of work. It had been the general view of the Bureau that the agendas of the bodies with which the Commission regularly co-operated might be a useful source of information for the Commission and that they should therefore be made available to all its members in a document to be circulated at the beginning of the next session.

11. Mr. TABIBI said he would appreciate it if the Secretariat would explain why the statement he had made as the Commission's representative at the seventeenth session of the Asian-African Legal Consultative Committee in June-July 1976 had not been reproduced in the *Yearbook* of the Commission.

* Resumed from the 1437th meeting.

¹ *Yearbook ... 1976*, vol. II (Part Two), p. 122, document A/31/10, chap. III, sect. B, subsect. 2, art. 19, para. 73 of the commentary.

12. Mr. RYBAKOV (Secretary to the Commission) said that, unfortunately, the Budget Division and the Department of Conference Services had decided that, for financial reasons, the practice of reproducing statements *in extenso* in the Yearbook of the Commission was to be avoided wherever possible.

**Draft report of the Commission on the work
of its twenty-ninth session (*continued*) ***

CHAPTER I. Organization of the session (A/CN.4/L.258)

13. The CHAIRMAN invited the Commission to consider, paragraph by paragraph, chapter I of the draft report, concerning the organization of the session (A/CN.4/L.258).

Paragraphs 1-6

Paragraphs 1-6 were approved.

Paragraph 7

14. Mr. ŠAHOVIĆ said that it was not the Commission's practice to devote a separate section of its report to the Enlarged Bureau. Since the Bureau was convened by the officers and its task was to allow for informal consultations, the fact that a separate section was devoted to it might have certain implications, particularly at the institutional level. He wished to point out that he was in no way questioning the usefulness of the Enlarged Bureau.

15. Mr. BEDJAOUI (Rapporteur) said that the Enlarged Bureau, like the Planning Group, had never been institutionalized. In order to follow the customary practice, it would be best if sections B and C, concerning the officers and the Enlarged Bureau respectively, were combined into a single section on the officers of the Commission, who were a recognized body.

16. Mr. TABIBI said that, while he was not opposed to the solution proposed by the Rapporteur, it was time to mention the existence of the Enlarged Bureau, which had been operating for some years and had proved extremely useful.

17. Mr. SETTE CÂMARA said he wondered whether it was really correct, in a section entitled "Officers", to deal with both the officers of the Commission and the membership of the Enlarged Bureau and the Planning Group.

18. The CHAIRMAN speaking as a member of the Commission and commenting on the remark by Mr. Tabibi, said that it was time to recognize the existence of the Enlarged Bureau but it should not be treated as a separate organ as the Drafting Committee was. The solution proposed by the Rapporteur therefore seemed the best.

19. Mr. ŠAHOVIĆ said that he too was in favour of that solution. The point raised by Mr. Tabibi deserved some thought. The end of the session was not a suitable time to consider a matter that involved the balanced representation of the members of the Commission as a whole.

20. The CHAIRMAN suggested that sections B and C

should be combined into a section B entitled "Officers" and that the words "of the Enlarged Bureau" should be deleted from the phrase "a Planning Group of the Enlarged Bureau", since at least one member of the Planning Group had not been a member of the Enlarged Bureau at the current session and such a situation might occur again.

It was so agreed.

Paragraph 7, as amended, was approved.

Paragraphs 8-12

Paragraphs 8-12 were approved.

Chapter I as a whole, as amended, was approved.

CHAPTER V. Other decisions and conclusions of the Commission (A/CN.4/L.262 and Add.1)

21. The CHAIRMAN invited the Commission to consider, paragraph by paragraph, the parts of chapter V of its draft report appearing in documents A/CN.4/L.262 and Add.1, namely, sections A, B, C, D, G, H, I and J.

A. Most-favoured-nation clause

Section A was approved.

B. The law of the non-navigational uses of international watercourses

Section B was approved.

C. Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier

Section C was approved.

D. Second part of the topic "Relations between States and international organizations"

Section D was approved.

G. Date and place of the thirtieth session

22. The CHAIRMAN said that the Enlarged Bureau had decided the previous day to recommend that the thirtieth session of the Commission should be held at Geneva from 8 May to 28 July 1978. The blanks in section G should be filled in accordingly. The thirtieth session would thus commence one week after the probable end of the second session of the Conference on Succession of States in respect of Treaties and would overlap the seventh session of the Conference on the Law of the Sea, to be held at Geneva in the spring of 1978, by only one week.

Section G, as thus completed, was approved.

H. Representation at the thirty-second session of the General Assembly

Section H was approved.

I. Gilberto Amado Memorial Lecture

23. The CHAIRMAN said that, in view of the difficulties encountered at the present session, the Enlarged Bureau had suggested that Mr. Elias, a judge at the International Court of Justice, should be invited straight away to give the Gilberto Amado Memorial Lecture at the next session. He proposed that the invitation should be mentioned in section I.

It was so agreed.

Section I was approved, subject to amendment to that effect.

* Resumed from the 1466th session.

J. International Law Seminar

24. The CHAIRMAN suggested that, in its report, the Commission should henceforth express its thanks to the Director of the Seminar, Mr. Raton, and his assistant, Miss Sandwell, for the effective organization of the Seminar.

It was so agreed.

Paragraph 17

25. Mr. EL-ERIAN said he did not think that it was necessary to specify the amounts of the fellowships offered by the individual countries. He therefore suggested that the wording of paragraph 17 should be modelled on that of paragraph 201 of the Commission's report on the work of its twenty-eighth session, which stated, *inter alia*, that "fellowships ranging in value from \$2,000 to more than \$4,000 were awarded to 14 candidates".²

26. The CHAIRMAN, speaking as a member of the Commission, said that he supported the suggestion made by Mr. El-Erian because, in his view, mentioning the amount of each contribution in the report would not help the Commission to obtain increased financial assistance from Governments for the travel and living expenses of Seminar participants.

27. Mr. TABIBI said that, in his opinion, the amounts of contributions by Governments to the Seminar should be mentioned in the Commission's report, if only in a foot-note. The names of the countries that had actually contributed to the Seminar and the amounts of their contributions would show that none of the great Powers seemed to attach much importance to the role of the Seminar as a training course for young jurists from developing countries.

28. Mr. NJENGA said that he also agreed with Mr. Tabibi on the importance of contributions by Governments to the Seminar. An indication of the amounts of the fellowships offered might encourage Governments to contribute or to increase their contributions.

29. Mr. DADZIE said that, in his view, mentioning the contributions to the Seminar in the report would encourage donor States, which would know that the Commission appreciated their contributions, and might induce other States to follow suit. The indication of the amounts of contributions could serve as a guide to those other States in deciding how much they might contribute themselves.

30. Mr. NJENGA suggested that, as a compromise, the Commission should follow the suggestion made by Mr. El-Erian, on the understanding that its representative at the thirty-second session of the General Assembly, Sir Francis Vallat, would bring the question of contributions to the Seminar to the attention of the Sixth Committee.

31. Mr. QUENTIN-BAXTER said that he supported the compromise suggestion made by Mr. Njenga. In his opinion, the Commission should ask Sir Francis Vallat, who would represent it at the General Assembly, to point out to the Sixth Committee that, in discussing that section of the report, the Commission had expressed concern that contributions to the Seminar were not being made by a wider range of Governments.

32. Mr. CASTAÑEDA said that he also supported the compromise suggestion made by Mr. Njenga.

33. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to model the wording of paragraph 17 on that of paragraph 201 of its report for 1976, on the understanding that he, as the Commission's representative at the General Assembly, would refer to the amounts of the contributions made as a basis for an appeal to Governments either to increase their contributions or to contribute to the Seminar for the first time.

It was so agreed.

Paragraph 17, as amended, was approved.

Section J, as amended, was approved.

CHAPTER III. Succession of States in respect of matters other than treaties (A/CN.4/L.260 and Add.1-3)**A. Introduction (A/CN.4/L.260)**

Section A was approved.

B. Draft articles on succession of States in respect of matters other than treaties (A/CN.4/L.260 and Add.1-3)**1. TEXT OF ALL DRAFT ARTICLES ADOPTED SO FAR BY THE COMMISSION (A/CN.4/L.260)**

Subsection 1 was approved.

2. TEXT OF ARTICLES 17-22, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS TWENTY-NINTH SESSION (A/CN.4/L.260/Add.1-3)

Commentary to article 17 (Scope of the articles in the present Part) and to article 18 (State debt) [A/CN.4/L.260/Add.1]

Paragraphs (1)-(6)

Paragraphs (1)-(6) were approved.

Paragraph (7)

34. Mr. QUENTIN-BAXTER proposed that, in the last sentence of the English text, for reasons of clarity, the words "only one of them is legally 'involved' ...: the predecessor State" should be replaced by the words "only the debts of one of them are legally 'involved' ...: those of the predecessor State."

It was so agreed.

Paragraph (7), as amended in the English version, was approved.

Paragraphs (8)-(14)

Paragraphs (8)-(14) were approved.

Paragraph (15)

35. Mr. SETTE CÂMARA proposed that the word "State" should be added to the list in the fourth sentence.

36. Mr. BEDJAOUÏ (Special Rapporteur) said that the use of "and so on" showed that the list in the fourth sentence was not restrictive. The word "State" might give rise to confusion for there were unitary States as well as federal states. He therefore proposed that the enumeration should begin with the words "federal unit" in order to avoid any ambiguity.

It was so agreed.

Paragraph (15), as amended, was approved.

² *Ibid.*, p. 154.

Paragraph (16)

37. Mr. SCHWEBEL proposed that, in the English text, the word "internationalists" should be replaced by the word "commentators", since "internationalist" did not signify a specialist in international law but an advocate of internationalism.

38. Mr. BEDJAOUI (Special Rapporteur) proposed that, in view of the problem posed by the translation of the word *internationalistes* into English, it should be replaced by the expression "authors on international law".

It was so agreed.

Paragraph (16), as amended, was approved.

Paragraphs (17)-(38)

Paragraphs (17)-(38) were approved.

Paragraph (39)

39. Mr. YANKOV proposed that, at the end of the last sentence, the word "independent" should be inserted before the word "State".

It was so agreed.

Paragraph (39), as amended, was approved.

Paragraphs (40)-(46)

Paragraphs (40)-(46) were approved.

Paragraph (47)

40. Mr. SCHWEBEL said that paragraph (47) did not take sufficient account of the views expressed by the many members of the Commission who had opposed the inclusion of the word "international" in the text of article 18. He therefore proposed that the paragraph should be amplified by the replacement of the first sentence by the following text:

"On the other hand, most members of the Commission did not favour inclusion of the term 'international' since, in their view, international law, including that of State succession, has been and quite rightly remains concerned with the interests of aliens as well as of States. No question of interference in a State's internal affairs arose. It was pointed out that the use of the word 'international' in the text would be contrary to the practice of States, which contained thousands of cases of succession of States to debts which were not debts on an inter-State or international plane but were State debts whose creditors were alien individuals or corporations. A great part, if not the bulk, of credit currently extended to States derives from foreign private sources, and it would be a regressive rather than progressive development if such credit were to be excluded from the Commission's draft."

41. His proposed amendment sought to emphasize, on the one hand, that international law did not take into account simply the interests of foreign States but also the interests of foreign individuals and, on the other hand, that a great part of the credit extended to States derived from foreign private sources.

42. Mr. BEDJAOUI (Special Rapporteur) said that he saw no major difficulty in accepting the text proposed by Mr. Schwebel. The two ideas introduced were important, if not for most of the members of the Commission, at

least for some of them. Mr. Schwebel was right to emphasize that international law was not concerned exclusively with States and that its ultimate beneficiary was the individual, who was the corner-stone of every society. Mr. Schwebel was also right to emphasize the importance of private credit, which fed the international financial market and enabled the countries of the third world to obtain the resources necessary for their development. However, too much emphasis should not be placed on the latter idea, for the stage at which newly independent States sought to benefit from international credit derived from private sources came after the stage of decolonization and State succession. The argument that the sources of credit open to developing countries should not be restricted had no point inasmuch as the question of international credit to newly independent States arose after the question of State succession and had no bearing on it.

43. Mr. YANKOV proposed that, in the first sentence of the text proposed by Mr. Schwebel, the words "most members" should be replaced by "several members". Again, the words "a great part" in the fourth sentence should be replaced by "an important part" and the words "if not the bulk" should be deleted, together with the clause "and it would be a regressive rather than progressive development if such credit were to be excluded from the Commission's draft", which seemed to introduce a subjective element.

44. Mr. USHAKOV supported the first of Mr. Yankov's proposals. The Commission's report should always say "a member" or "several members", and never "most members", as it was impossible to determine the exact number of members of the Commission who had supported a particular view.

45. Mr. TABIBI said that, in the fourth sentence of the text proposed by Mr. Schwebel, the expression "a great part" over-emphasized private sources of international credit to the detriment of two other equally important sources, namely, international organizations and States. In Afghanistan and most other Asian countries and in Africa, credit was essentially in the form of inter-State loans.

46. Mr. SCHWEBEL agreed to the change proposed by Mr. Yankov. Nevertheless, he would prefer the words "most members" to be replaced by "many members".

It was so agreed.

The alteration proposed by Mr. Schwebel, as amended, was approved.

Paragraph (47), as amended, was approved.

The commentary to articles 17 and 18, as amended, was approved.

The meeting rose at 1.10 p.m.

1471st MEETING

Thursday, 28 July 1977, at 10.05 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian,