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Summary record of the 1580th meeting

Topic:
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20. The CHAIRMAN proposed that if there were no objections the Commission should adopt article 32 proposed by the Drafting Committee, the Spanish title having been amended as proposed by Mr. Barboza.

It was so decided.

21. The CHAIRMAN pointed out that the Drafting Committee had considered it inadvisable, for the time being, to consider the new article it had been proposed to add. That proposal concerned not only articles 31 and 32 but all the articles in chapter V, so that it would have to be studied later.

The meeting rose at 4 p.m.

1580th MEETING

Tuesday, 31 July 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Review of the multilateral treaty-making process (General Assembly resolution 32/48 para. 2) (concluded)* (A/CN.4/325)

[Item 6 of the agenda]

REPORT OF THE WORKING GROUP

1. The CHAIRMAN said that, at a closed meeting, the Commission had approved the report of the Working Group on review of the multilateral treaty-making process (A/CN.4/325), established in response to the request of the General Assembly. The report would be sent that day to the Secretary-General for publication as a separate document, the closing date for submission of comments by the Commission having been fixed at 31 July. The report would also be published in the Commission's *Yearbook* as one of the documents of the thirty-first session.

2. If there were no objections, he would take it that the Commission approved those steps.

It was so decided.

3. Sir Francis VALLAT said that all the members of the Working Group on review of the multilateral treaty-making process would no doubt wish to join him in expressing their appreciation to Mr. Quentin-Baxter,

Chairman of the Working Group, as well as to the Secretariat, and in particular Mr. Romanov, Secretary to the Commission, for their excellent work.

Draft report of the Commission on the work of its thirty-first session

4. The CHAIRMAN invited the Commission to consider its draft report on its thirty-first session, beginning with chapter I.

CHAPTER I. *Organization of the session* (A/CN.4/L.301 and Corr.1)

5. Mr. DADZIE (Rapporteur), introducing chapter I of the draft report, said that it followed broadly the form of previous reports. Paragraphs 1 and 2 indicated the content of the report, and sections A, B, C, D and E dealt, respectively, with the composition of the Commission, its officers, the Drafting Committee, the Working Group on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and the Working Group on review of the multilateral treaty-making process. Section F, on the juridical status of the members of the Commission at the place of its permanent seat, was a new section which had been included to record the developments that had taken place in that matter since the Commission's report on its thirtieth session. The two remaining sections, G and H, followed the normal form of the Commission's reports on the work of its sessions.

Paragraphs 1-4

Paragraphs 1-4 were adopted.

Paragraph 5

6. Sir Francis VALLAT said that the statement in paragraph 5 did not give a correct picture of the actual position regarding attendance by members. He felt bound to raise the question since, unless there was an improvement, the work of the Commission would suffer seriously.

7. One possible solution would be to add a foot-note referring to the paragraphs dealing with the report of the Planning Group. Such a foot-note might read: "On the question of attendance, see paragraphs ... below."

8. Mr. TSURUOKA supported that proposal.

9. Mr. YANKOV agreed that paragraph 5 was not altogether satisfactory. He proposed that, in addition to the foot-note suggested by Sir Francis Vallat, a sentence should be added to the paragraph reading: "Some members were not able to attend all the meetings of the Commission."

It was so decided.

Paragraph 5, as amended, was adopted.

Paragraphs 6-12

Paragraphs 6-12 were adopted.

* Resumed from the 1546th meeting.

Paragraph 13

10. Sir Francis VALLAT proposed that the last phrase of paragraph 13, reading “which would facilitate the staying of its members in Geneva during its sessions”, should be amended to read “which would facilitate the performance of their functions by its members during the sessions at Geneva”. That would more accurately reflect the purpose for which a certain status was conferred on members of the Commission.

It was so decided.

Paragraph 13, as amended, was adopted.

Paragraphs 14 and 15

Paragraphs 14 and 15 were adopted.

Paragraph 16

11. Sir Francis VALLAT was a little doubtful about the first sentence of paragraph 16, since it could create a wrong impression regarding the nature of the Commission's treatment of items 8 and 9. He therefore proposed the addition, at the end of that sentence, of the phrase “which were considered only from the point of view of organization”.

12. Mr. RIPHAGEN supported that proposal, provided that it was supplemented by a brief description of the Commission's work on those two agenda items in the chapter of the report entitled “Other decisions and conclusions of the Commission”.

It was so decided.

Paragraph 16, as amended, was adopted.

Chapter I, as amended, was adopted.

CHAPTER IV. Question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/L.304)

A. Introduction

Paragraphs 1–5

Paragraphs 1–5 were adopted.

Paragraph 6

13. Sir Francis VALLAT, referring to the last sentence of paragraph 6, proposed the deletion of the word “felicitous” and the addition of the words “in the context” after the word “clarity”.

It was so decided.

Paragraph 6, as amended, was adopted.

Paragraph 7

14. Sir Francis VALLAT said that the reference, in the last sentence of paragraph 7, to “compromise solutions” was not appropriate in the context of codification articles. He therefore proposed the deletion of the word “compromise”.

It was so decided.

Paragraph 7, as amended, was adopted.

Paragraphs 8 and 9

Paragraphs 8 and 9 were adopted.

Section A, as amended, was adopted.

B. Draft articles on treaties concluded between States and international organizations or between international organizations

TEXT OF ARTICLES 39–60, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTY-FIRST SESSION

ARTICLE 39 (General rule regarding the amendment of treaties)

15. Sir Francis VALLAT, referring to paragraph 1 of article 39, thought that the omission of the phrase “except in so far as the treaty may otherwise provide”, which appeared in article 39 of the Vienna Convention on the Law of Treaties,¹ could give rise to questions of interpretation. It was not his intention, however, to propose any amendment.

ARTICLE 54 (Termination of or withdrawal from a treaty under its provisions or by consent of the parties)

16. Mr. VEROSTA proposed that subparagraph (b) of article 54 should be amended and replaced by the text of the corresponding provision of the Vienna Convention, namely, “at any time by consent of all the parties after consultation with the other contracting States”, supplemented by the words “or with the other contracting organizations, or with the other contracting States and the other contracting organizations, as the case may be”.

17. Mr. USHAKOV said that such amendments could more easily be made during the second reading of the draft articles.

Section B was adopted.

Chapter IV, as amended, was adopted.

CHAPTER VII. Jurisdictional immunities of States and their property (A/CN.4/L.307)

Paragraphs 1–12

Paragraphs 1–12 were adopted.

Paragraph 13

18. Sir Francis VALLAT, referring to the first sentence of paragraph 13, said it was his understanding that there was to be no further discussion of the report in question. He therefore proposed the deletion of the word “preliminary”.

It was so decided.

Paragraph 13, as amended, was adopted.

Paragraph 14

19. Mr. YANKOV, referring to the first sentence of paragraph 14, said that the phrase “of which little had been known” was too categorical in the context, par-

¹ *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

ticularly as it had been suggested that the practice of newly emergent nations should be the subject of closer analysis. He suggested the addition of the word "relatively" before the word "little", which would reflect the position more accurately.

20. After a brief exchange of views in which the CHAIRMAN, Mr. BARBOZA and Mr. DÍAZ GONZÁLEZ took part, Mr. RIPHAGEN proposed the deletion of the phrase "of which little had been known".

It was so decided.

Paragraph 14, as amended, was adopted.

21. Sir Francis VALLAT said that the expression "several types of power", in the second sentence of paragraph 15, seemed to be divorced from the concept of governmental authority and to have connotations of physical power which were not intended. Moreover, the word "several" was inappropriate, since there were not many different forms of governmental authority. He therefore proposed that the expression in question be amended to read "various types of governmental power".

It was so decided.

Paragraph 15, as amended, was adopted.

Paragraph 16

22. Mr. RIPHAGEN, referring to the last sentence of paragraph 16, proposed that the word "other" be deleted, since whether or not the "act of State" doctrine was a matter of internal law was open to question.

23. He further proposed that, in the French text, the English expression "act of State" should be used rather than "acte de gouvernement", which was a doctrine peculiar to French administrative law.

It was so decided.

24. Mr. BARBOZA proposed that, to bring the Spanish text of the same sentence into line with the English and French versions, the word "meramente", or "puramente", should be added before the words "de derecho interno".

It was so decided.

Paragraph 16, as amended, was adopted.

Paragraph 17

25. Mr. YANKOV proposed the addition, in the second sentence of paragraph 17, of the words "of the functions" before the words "of the State".

It was so decided.

26. Mr. USHAKOV expressed astonishment at the reference to the widening functions of the State. He proposed the deletion of the words "the theories as to", in the first sentence of paragraph 17.

It was so decided.

27. Sir Francis VALLAT suggested that the words "the concept of", in the same sentence, should also be deleted.

It was so decided.

28. Mr. THIAM did not think it accurate to state, in the last sentence but one, that "no generally accepted criterion had been found", since what had been said was merely that no generally accepted criterion had yet emerged.

29. The CHAIRMAN said that the slight differences between the English and French texts should be eliminated by aligning the latter text with the former.

Paragraph 17, as amended, was adopted.

Paragraph 18

30. Mr. QUENTIN-BAXTER proposed that, to improve the drafting of the second sentence of paragraph 18, the phrase "States were best familiar with" should be replaced by "States knew best".

It was so decided.

31. Mr. USHAKOV, referring to the first sentence of paragraph 18, said that the Commission did not expect "guidance" from Governments of Member States; he proposed that that word be deleted.

32. Sir Francis VALLAT said that that involved a minor point of substance. It was not yet known whether the purpose of the questionnaire would be simply to seek information or also to obtain the views of Governments on particular points. His feeling was that Governments should be asked in the questionnaire to indicate their preferences in certain matters.

33. The CHAIRMAN suggested that the word "guidance" be replaced by the word "information".

It was so decided.

Paragraph 18, as amended, was adopted.

Chapter VII, as amended, was adopted.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (General Assembly resolution 33/139, part I, para. 5; General Assembly resolution 33/140, para. 5) (concluded)* (A/CN.4/L.310)

[Item 7 of the agenda]

REPORT OF THE WORKING GROUP

34. Mr. YANKOV (Chairman of the Working Group on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier) introduced the Working Group's report on its discussions during the Commission's current session (A/CN.4/L.310). The report comprised an updated analytical summary of the general views of Governments on the elaboration of a protocol on the subject and the comments and proposals of Governments and of the Commission on possible elements of a protocol. The sections in question had been prepared largely on the basis of a working paper drafted by the Secretariat, to whose officers the Working Group wished to express

* Resumed from the 1546th meeting.

appreciation for their most valuable assistance. The report also mentioned a number of points which, in the view of the Working Group, should be included in the tentative list, established by the Commission,² of issues requiring specific study.

35. From its examination of the comments of Governments and of the Commission, as well as of the (expanded) tentative list of issues requiring particular attention, the Working Group had determined that there were many questions relating to the status of the diplomatic courier and the unaccompanied diplomatic bag concerning which no provisions, or only general provisions, were contained in existing international conventions. It had therefore concluded, as stated in section V of its report, that work on the topic should be continued and that the Secretariat should be asked to prepare a further report on the lines of the aforementioned working paper, in which it would analyse such additional written comments as might be received from Governments and such views as might be expressed during the thirty-fourth session of the General Assembly. That report would serve as an aid in the preparation of draft articles by the Working Group or by a special rapporteur, as the Commission might decide.

36. The CHAIRMAN noted that the Working Group recommended that the Commission should insert in its report to the General Assembly the five sections making up the Group's report. Since sections I to III dealt with facts (history of the study of the question by the Commission, views expressed by Governments and comments made by the Commission in 1978), the Commission might decide to approve them without discussion.

It was so decided.

Sections I-III were adopted.

37. The CHAIRMAN invited the members of the Commission to consider section IV (Additional items to be included in the tentative list of issues) and section V (Conclusions and recommendations).

38. Sir Francis VALLAT hoped—and he was sure that other members of the Commission who had not been members of the Working Group also hoped—that the list of additional issues contained in section IV of the Working Group's report was not to be considered exhaustive, as its present title might be taken to suggest.

39. He hoped, too, that whoever continued the work on the topic would not take the descriptions of the "additional items" listed in section IV too literally, lest he overreach what must be the objective of codification in the field in question by providing for privileges and immunities more extensive than those necessary for the exercise of the functions of a diplomatic courier or the smooth passage of a diplomatic bag.

40. He believed that the topic of the status of the diplomatic courier and of the unaccompanied diplomatic bag was one with which the General Assembly wished the Commission to deal expeditiously, and that the time had now come to take practical steps to do so. The Commission should therefore appoint a special rapporteur for the topic forthwith. He hoped that, by taking advantage of the valuable work done by the Working Group, that special rapporteur would be able to submit draft articles and commentaries to the Commission at its next session.

41. Mr. YANKOV (Chairman of the Working Group) said that the operative word in the title of section IV of the Working Group's report was "tentative". He agreed with the previous speaker that the time had now come for the Commission to take practical steps to advance its work on the topic, and that care should be taken not to extend the rules applicable to the point where the diplomatic courier became what might be termed a "super-ambassador" or "super-diplomatic-agent".

42. Mr. USHAKOV proposed that, to take account of a comment by Sir Francis Vallat, section IV should be entitled "Additional items to be studied".

43. He was in favour of the appointment of a special rapporteur.

44. Mr. THIAM, Mr. TSURUOKA and Mr. VEROSTA supported Mr. Ushakov's views.

45. Mr. RIPHAGEN said that, to avoid restricting the special rapporteur, the words "on the basis of the list of issues identified by the Commission", appearing at the end of section V, should be deleted.

46. The CHAIRMAN, noting that the members of the Commission were in favour of appointing a special rapporteur rather than reconstituting the Working Group, said that if there were no objections he would take it that the Commission decided to adopt sections IV and V of the report, the title of section IV being amended as proposed by Mr. Ushakov, the subparagraph of section V, paragraph 16, concerning the reconstitution of the Working Group being deleted and the subparagraph concerning the appointment of a special rapporteur being amended as proposed by Mr. Riphagen.

It was so decided.

The report of the Working Group (A/CN.4/L.310), as amended, was adopted.

Organization of future work

[Item 12 of the agenda]

47. The CHAIRMAN announced that, after consultations, the Enlarged Bureau had recommended that the Commission should appoint Mr. Riphagen as Special Rapporteur for the topic of State responsibility in place of Mr. Ago, who had recently been elected member of the International Court of Justice.

² *Yearbook... 1978*, vol. II (Part Two), p. 139, document A/33/10, para. 143.

48. If there were no objections, he would take it that the Commission decided to accept that recommendation.

It was so decided.

49. The CHAIRMAN announced that, after consultations, the Enlarged Bureau had recommended that the Commission should appoint Mr. Díaz González as Special Rapporteur for the second part of the topic "Relations between States and international organizations" in place of Mr. El-Erian, who had recently been elected member of the International Court of Justice, on the understanding that the title of the topic would subsequently be formulated in more explicit terms.

50. If there were no objections, he would take it that the Commission decided to accept that recommendation.

It was so decided.

51. The CHAIRMAN said that, after consultations, the Enlarged Bureau had recommended that the Commission should appoint Mr. Yankov, Chairman of the Working Group on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, as Special Rapporteur for that topic.

52. If there were no objections, he would take it that the Commission decided to accept that recommendation.

It was so decided.

53. The CHAIRMAN said that if there were no objections he would take it that the Commission wished to hold its next session from 5 May to 27 July 1980, as recommended by the Enlarged Bureau.

It was so decided.

54. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to authorize him to present its report on its thirty-first session to the General Assembly, and to represent it at the regular sessions of the bodies with which the Commission maintained continuous relations, on the understanding that, if he were unable to attend a session, he might appoint another member of the Commission to replace him.

It was so decided.

Draft report of the Commission on the work of its thirty-first session (*continued*)

CHAPTER V. *The law of the non-navigational uses of international watercourses* (A/CN.4/L.305)

A. Introduction

Paragraphs 1-6

Paragraphs 1-6 were adopted.

Paragraph 7

55. Sir Francis VALLAT drew attention to the need for an editorial change in the first sentence, to indicate the passage quoted from the resolution mentioned.

Paragraph 7, as amended, was adopted.

Paragraphs 8-25

Paragraphs 8-25 were adopted.

Section A, as amended, was adopted.

B. Consideration of the topic at the present session

Paragraphs 26 and 27

Paragraphs 26 and 27 were adopted.

1. NATURE OF THE TOPIC

Paragraphs 28-33

Paragraphs 28-33 were adopted.

2. SCOPE OF THE TOPIC

Paragraph 34

Paragraph 34 was adopted.

Paragraph 35

56. Mr. TABIBI proposed that the word "new" should be deleted from the first sentence, since the position mentioned had been shared by the previous Special Rapporteur for the topic.

It was so decided.

Paragraph 35, as amended, was adopted.

Paragraphs 36-42

Paragraphs 36-42 were adopted.

3. QUESTION OF FORMULATING RULES ON THE TOPIC

Paragraphs 43 and 44

Paragraphs 43 and 44 were adopted.

Paragraph 45

57. Sir Francis VALLAT proposed that the end of the fourth sentence should be amended to read "since they would be founded on customary law".

It was so decided.

58. Sir Francis VALLAT observed that the phrase "both under traditional and contemporary law", in the seventh sentence, suggested a proposition to which he could not subscribe, namely, that two bodies of law were involved and that one had entirely superseded the other.

59. Mr. RIPHAGEN proposed the deletion of the phrase.

It was so decided.

Paragraph 45, as amended, was adopted.

Paragraphs 46-48

Paragraphs 46-48 were adopted.

4. METHODOLOGY TO BE FOLLOWED IN FORMULATING RULES ON THE TOPIC

Paragraphs 49-55

Paragraphs 49-55 were adopted.

5. COLLECTION AND EXCHANGE OF DATA WITH RESPECT TO INTERNATIONAL WATERCOURSES

Paragraphs 56-58

Paragraphs 56-58 were adopted.

6. FUTURE WORK ON THE TOPIC

Paragraph 59

60. Mr. YANKOV proposed the insertion, in the last sentence, of the word “particularly” before the words “to developing countries”.

It was so decided.

Paragraph 59, as amended, was adopted.

Paragraphs 60–63

Paragraphs 60–63 were adopted.

Section B, as amended, was adopted.

Chapter V as a whole, as amended, was adopted.

The meeting rose at 1.10 p.m.

1581st MEETING

Wednesday, 1 August 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Tabibi, Mr. Thiam, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Also present: Mr. Ago.

Draft report of the Commission on the work of its thirty-first session (*continued*)

CHAPTER II. *Succession of States in respect of matters other than treaties* (A/CN.4/L.302 and Add.1–4)

B. *Draft articles on succession of States in respect of matters other than treaties* (A/CN.4/L.302/Add.1–3)

COMMENTARY TO THE INTRODUCTION TO PART I (A/CN.4/L.302/Add.1)

The commentary to the introduction to part I was approved.

ARTICLES 1–3 (A/CN.4/L.302/Add.1)

Commentary to article 1 (Scope of the present articles)

The commentary to article 1 was approved.

Commentary to article 2 (Use of terms)

The commentary to article 2 was approved.

Commentary to article 3 (Cases of succession of States covered by the present articles)

The commentary to article 3 was approved.

PART II (STATE PROPERTY)

ARTICLES 4–14 (A/CN.4/L.302/Add.2)

Commentary to article 4 (Scope of the articles in the present part)

The commentary to article 4 was approved.

Commentary to article 5 (State property)

The commentary to article 5 was approved.

Commentary to article 6 (Rights of the successor State to State property passing to it)

The commentary to article 6 was approved.

Commentary to article 7 (Date of the passing of State property)

The commentary to article 7 was approved.

Commentary to article 8 (Passing of State property without compensation)

The commentary to article 8 was approved.

Commentary to article 9 (Absence of effect of a succession of States on third party State property)

The commentary to article 9 was approved.

Commentary to the introduction to section 2 (Provisions relating to each type of succession of States)

The commentary to the introduction to section 2 was approved.

Commentary to article 10 (Transfer of part of the territory of a State)

The commentary to article 10 was approved.

Commentary to article 11 (Newly independent State)

The commentary to article 11 was approved.

Commentary to article 12 (Uniting of States)

The commentary to article 12 was approved.

Commentary to article 13 (Separation of part or parts of the territory of a State) and article 14 (Dissolution of a State)

Paragraph (6)

1. Mr. VEROSTA questioned the truth of the historical facts described in the first sentence of paragraph (6), and the advisability of referring to them as an example of the dissolution of a State.

2. Sir Francis VALLAT pointed out that when the Commission gave examples it was not bound by the way in which they were classified.

3. The CHAIRMAN suggested that a small group composed of Mr. Verosta, Sir Francis Vallat, the Chairman of the Drafting Committee and a representative of the Secretariat should convene after the meeting and try to improve the wording of the first sentence of paragraph (6).

It was so decided.

C. *Draft articles on succession of States in respect of matters other than treaties: addendum* (A/CN.4/L.302/Add.4)

INTRODUCTION AND GENERAL COMMENTARY

The introduction and general commentary were adopted.

Commentary to article A (State archives)

The commentary to article A was approved.

Commentary to article C (Newly independent State)

The commentary to article C was approved.