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Summary record of the 1638th meeting

Topic:
Other topics

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also taken note of the relationship of the topic with other conventions and in particular with article 73 of the 1963 Vienna Convention and article 3 of the 1975 Vienna Convention.

55. In conclusion, he thanked members of the Commission and the secretariat for their assistance.

56. The CHAIRMAN thanked the Special Rapporteur, on behalf of the Commission, for his report and oral presentation.

Jurisdictional immunities of States and their property (concluded)* (A/CN.4/331 and Add.1, A/CN.4/L.317)

[Item 5 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (concluded)

ARTICLE 6 (State immunity)⁶ (concluded)

57. The CHAIRMAN reminded members that at the 1634th meeting the Commission had heard the report of the Chairman of the Drafting Committee and had adopted draft article 1, subject to certain reservations regarding points of substance and drafting. The Commission had then considered draft article 6. There had been clear criticism of the presentation of the principle of State immunity, and a request had been made for the inclusion in the Commission's report of an alternative version of that principle. There had also been criticisms relating to the difficulty of reaching a conclusion without the fuller background provided by the commentaries to be incorporated in the report, which was not yet before the Commission.

58. In view of that situation, he suggested that the Commission should adopt draft article 6 as proposed by the Drafting Committee, on the understanding that members would have an opportunity, when the report was before them, to ensure that their views were adequately recorded.

It was so decided.

The meeting rose at 1 p.m.

* Resumed from the 1634th meeting.

⁶ For text, see 1634th meeting, para. 43.

1638th MEETING

Tuesday, 22 July 1980, at 10 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Diaz González, Mr. Evensen, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

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

1. The CHAIRMAN invited the Commission to consider its draft report on its thirty-second session, beginning with Chapter IV.

CHAPTER IV. Question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/L.314 and Add.1 and Add.1/Corr.1)

A. Introduction

Paragraphs 1–4

Paragraphs 1–4 were approved.

Paragraph 5

2. Sir Francis VALLAT proposed that the words “the final codification”, in the third sentence, should be replaced by the words “the final instrument of codification”.

It was so decided.

Paragraph 5, as amended, was approved.

Paragraphs 6–9

Paragraphs 6–9 were approved.

Section A, as amended, was approved.

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

TEXT OF ARTICLES 61–80 AND ANNEX, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTY-SECOND SESSION

PART V. Invalidation, termination and suspension of the operation of treaties

SECTION 3. Termination and suspension of the operation of treaties

ARTICLES 61–64

Commentary to article 61 (Supervening impossibility of performance)

Paragraph (4)

3. Mr. REUTER (Special Rapporteur), referring to the penultimate sentence, said he had originally thought that some members wished article 73 to state a general reservation. But since neither the Commission nor the Drafting Committee had adopted a general formula for that article, he proposed that the penultimate sentence be deleted; as a consequential amendment, the word “Accordingly” at the beginning of the next sentence should also be deleted.

It was so decided.

The commentary to article 61, as amended, was approved.

Commentary to article 62 (Fundamental change of circumstances)

Paragraph (2)

4. Mr. VEROSTA proposed that, to bring the French text of the sixth sentence into line with the English, the comma after the word “*circumstances*” should be replaced by a full-stop, and that a new sentence should start with the word “*Mais*”.

It was so decided.

Paragraph (8)

5. Mr. SCHWEBEL proposed that the words “by authority”, in the fourth sentence, be replaced by the words “where it is especially accorded that authority”.

It was so decided.

The commentary to article 62, as amended, was approved.

Commentary to article 63 (Severance of diplomatic or consular relations)

Paragraph (1)

6. Mr. SCHWEBEL, drawing attention to a typographical error, pointed out that the word “in”, in the first line, should be deleted.

7. Mr. YANKOV, referring to the same line, proposed that the word “and” be replaced by the word “or”, as in the title of the article.

It was so decided.

The commentary to article 63, as amended, was approved.

Commentary to article 64 (Emergence of a new peremptory norm of general international law (*jus cogens*))

The commentary to article 64 was approved.

Section 3, as amended was approved.

SECTION 4. Procedure

ARTICLES 65–68

Commentary to article 65 (Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty)

Paragraph (1)

8. Sir Francis VALLAT pointed out that, in the third line of the English text, the bracket should be closed after the word “draft” and before the comma.

The commentary to article 65, as amended, was approved.

Commentary to article 66 (Procedures for judicial settlement, arbitration and conciliation)

Paragraph (5)

9. Mr. SCHWEBEL said he wondered whether the word “notion” was appropriate in the context.

10. Sir Francis VALLAT proposed that, to meet Mr.

Schwebel’s point, the English text should be brought into line with the French: the word “dispute” would then be underlined and the word “notion” would not.

It was so decided.

Paragraph (7)

11. Mr. REUTER proposed that the word “therefore”, in the second sentence (“*donc*” in the French text), be deleted.

It was so decided.

Paragraph (9)

12. Sir Francis VALLAT, referring to the second sentence, said he thought a reference should also be made to the “existence” of a peremptory norm. He therefore proposed that the words “the interpretation and the application of peremptory norms” should be replaced by the words “the existence, interpretation or application of a peremptory norm”, and that the necessary consequential amendment should be made to the first sentence of the paragraph.

It was so decided.

13. Mr. SCHWEBEL said that the last sentence of the paragraph suggested that a dispute between two international organizations, or possibly between a State and an international organization in which a second organization was involved, would not be one that arose within the scope of the activities of those organizations and that, accordingly, they might not be able to request an advisory opinion of the International Court of Justice. That seemed to him to be a somewhat far-fetched idea, and he therefore proposed that the last sentence of paragraph (9) be deleted.

It was so decided.

Paragraph (13)

14. Sir Francis VALLAT proposed that, to clarify the intent of the last sentence of the paragraph, the words “recourse to the International Court of Justice in the case of a dispute” should be replaced by the words “the submission to the International Court of Justice of a dispute”.

It was so decided.

The commentary to article 66, as amended, was approved.

Commentary to article 67 (Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty)

The commentary to article 67 was approved.

Commentary to article 68 (Revocation of notifications and instruments provided for in articles 65 and 67)

The commentary to article 68 was approved.

Section 4, as amended, was approved.

SECTION 5. *Consequences of the invalidity, termination or suspension of the operation of a treaty*

ARTICLES 69–72

Commentary to article 69 (Consequences of the invalidity of a treaty)

Paragraph (2)

15. Sir Francis VALLAT pointed out that the word “There”, at the beginning of the second sentence, should be replaced by “They”.

16. Mr. SCHWEBEL proposed that, in the same sentence, a comma be inserted after the words “draft articles”.

It was so decided.

The commentary to article 69, as amended, was approved.

Commentary to article 70 (Consequences of the termination of a treaty)

The commentary to article 70 was approved.

Commentary to article 71 (Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law)

17. Sir Francis VALLAT said that, in his view, the word “imperfect” in the last sentence of the commentary, was too strong. He proposed, however, that it be left to the Special Rapporteur to make an appropriate amendment.

It was so decided.

Subject to that amendment, the commentary to article 71 was approved.

Commentary to article 72 (Consequences of the suspension of the operation of a treaty)

The commentary to article 72 was approved.

Section 5, as amended, was approved.

Part V, as amended, was approved.

PART VI. *Miscellaneous provisions*

ARTICLES 73–75

Commentary to article 73 (Cases of succession of States, responsibility of a State or of an international organization, outbreak of hostilities, termination of the existence of an organization and termination of participation by a State in the membership of an organization)

18. The CHAIRMAN drew attention to the corrections to Parts VI and VII of Chapter IV of the report contained in document A/CN.4/L.314/Add.1/Corr.1.

Paragraph (1)

Paragraph (1), as corrected by document A/CN.4/L.314/Add.1/Corr.1, was approved.

Paragraph (2)

19. Mr. RIPHAGEN expressed reservations on the interpretation of article 73 of the Vienna Convention

on the Law of Treaties contained in paragraph (2). He wondered whether it was absolutely necessary to include it in the report.

20. Mr. REUTER (Special Rapporteur) pointed out that, both in the Drafting Committee and in the Commission, a great many matters which could have been reserved had been mentioned, but had not finally been retained in the draft. It therefore seemed necessary to state somewhere that the Vienna Convention did not claim to list all matters which might be reserved. The reason why succession of States and the international responsibility of a State were the only matters mentioned in article 73 of the Vienna Convention was that, at the time, they had been due to become the subject of draft articles. Thus the awkward problems of recognition of a State or Government, which might be posed by participation in a multi-lateral treaty, had not been mentioned, although they had given rise to animated discussion. Unlike Mr. Riphagen, he believed that those problems had not been solved by the Vienna Convention on Diplomatic Relations.

21. It would therefore be inappropriate to delete paragraph (2) of the commentary under discussion, which explained the subtleties of the situation. It would be going too far to say that all the matters not listed in article 73 of the Vienna Convention were not reserved. It had, of course, been specified that there were no causes of nullity of a treaty other than those set out in part V of the Vienna Convention, but it had never been affirmed in general terms that any question not subject to an express reservation in article 73 was deemed to be settled by that instrument.

22. It should also be noted that all the problems which might arise were not mentioned in paragraph (2) of the commentary under discussion. On that point he referred to the considerations he had expressed at the end of his summary of the discussion on draft article 73 (see 1592nd meeting, paras. 15–19). In his view it was essential to indicate, in the commentary to that provision, that the Commission had not taken a position on a number of questions that might arise.

23. Mr. SCHWEBEL said that a compromise solution might be simply to delete the second and third sentences of paragraph (2).

24. Sir Francis VALLAT proposed that the second sentence of the paragraph be deleted and that, in the last sentence, the words “The list in article 73 is certainly not exhaustive; it is merely intended” should be replaced by the words “In the view of the Commission, article 73 is merely intended”.

It was so decided.

Paragraph (2), as amended, was approved.

Paragraph (3)

25. Sir Francis VALLAT proposed that, in view of the amended wording of paragraph (2), the words “In

the light of this view of” should be inserted at the beginning of the paragraph, and the words “having thus been determined” should be deleted.

It was so decided.

Paragraph (3), as amended, was approved.

Paragraph (4)

Paragraph (4) was approved.

Paragraph (5)

26. Mr. RIPHAGEN said that the last sentence of the paragraph was not entirely accurate. He proposed that the words “formulated in terms identical to those of” should be replaced by the words “having the same purpose as that provided in”.

It was so decided.

Paragraph (5), as amended, was approved.

Paragraphs (6) and (7)

Paragraphs (6) and (7) were approved.

Paragraph (8)

27. Mr. USHAKOV expressed reservations on paragraph (8). He did not see what difficulties establishment of an international organization presented in regard to treaties concluded by States which had subsequently become members of the organization and might have transferred certain powers to it. Furthermore, he did not think the case referred to in paragraph (8) concerned a real international organization.

28. Mr. VEROSTA, referring to the end of the first sentence of the French text, suggested that the word “*naissance*”, which suggested a mysterious phenomenon, should be replaced by “*constitution*”.

It was so decided.

Paragraph (8), as amended, was approved.

Paragraph (9)

Paragraph 9 was approved.

Paragraph (10)

Paragraph (10), as corrected by document A/CN.4/L.314/Add.1/Corr.1, was approved.

Paragraphs (11) to (14)

Paragraphs (11) to (14) were approved.

The commentary to article 73, as amended, was approved.

Commentary to article 74 (Diplomatic and consular relations and the conclusion of treaties)

The commentary to article 74 was approved.

Commentary to article 75 (Case of an aggressor State)

Paragraph (1)

29. Mr. VEROSTA proposed that the word “*conflit*”

in the first sentence of the French text, be replaced by “*guerre*”.

It was so decided.

Paragraph (1), as amended, was approved.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were approved.

The commentary to article 75, as amended, was approved.

Part VI, as amended, was approved.

PART VII. Depositories, notifications, corrections and registration

ARTICLES 76–80

Commentary to article 76 (Depositories of treaties)

The commentary to article 76 was approved.

Commentary to article 77 (Functions of depositories)

Paragraphs (1)–(5)

Paragraphs (1)–(5) were approved.

Paragraph (6)

30. Sir Francis VALLAT said that the word “Unfortunately”, in the last sentence, was inappropriate.

31. Mr. SCHWEBEL proposed that it should be replaced by the word “However”.

It was so decided.

Paragraph (6), as amended, was approved.

Paragraph (7)

Paragraph (7), with the correction to foot-note 36 contained in document A/CN.4/L.314/Add.1/Corr.1, was approved.

Paragraphs (8)–(10)

Paragraphs (8)–(10) were approved.

The commentary to article 77, as amended, was approved.

Commentary to article 78 (Notifications and communications)

The commentary to article 78 was approved.

Commentary to article 79 (Correction of errors in texts or in certified copies of treaties)

The commentary to article 79 was approved.

Commentary to article 80 (Registration and publication of treaties)

Paragraph (1)

32. Sir Francis VALLAT said that the word “held”, in the second sentence, was too strong, since it was

normally used with reference to judicial decisions. He proposed that it should be replaced by the word “said”.

It was so decided.

Paragraph (1), as amended, was approved.

Paragraph (2)

Paragraph (2) was approved.

The commentary to article 80, as amended, was approved.

Part VII, as amended, was approved.

The meeting rose at 12.55 p.m.

1639th MEETING

Wednesday, 23 July 1980, at 9.45 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Diaz González, Mr. Evensen, Mr. Francis, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

1. The CHAIRMAN said it was his pleasure to welcome to the Commission the Observer for the Arab Commission for International Law, Mr. Mahmoud El Baccouch, Director of the Treaties Department of the League of Arab States.

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

CHAPTER IV. Question of treaties concluded between States and international organizations or between two or more international organizations (concluded) (A/CN.4/L.314 and Add.1 and Add.1/Corr.1)

ANNEX (A/CN.4/L.314/Add.1)

Commentary to the Annex to the draft articles (Procedures established in application of article 66)

2. The CHAIRMAN invited the Commission to consider, paragraph by paragraph, the commentary to the annex to the draft articles contained in document A/CN.4/L.314/Add.1.

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

3. Sir Francis VALLAT proposed that the word “extremely”, in the first sentence, should be deleted.

4. Mr. REUTER (Special Rapporteur) proposed that a corresponding change—namely, of the word “fort”—should be made to the French text.

It was so decided.

Paragraph (2), as amended, was approved.

Paragraph (3)

5. Mr. SCHWEBEL said that the fifth sentence was ambiguous and called for clarification.

6. Sir Francis VALLAT suggested that the sentence could be made clearer by replacing the word “might” by “cannot”.

7. Mr. SCHWEBEL suggested that, to remove all ambiguity, the word “which” should be replaced by the words “since they”.

8. Mr. REUTER (Special Rapporteur) proposed that the words “which might be members of the United Nations” should be replaced by the words “in their character as members of the United Nations, since they cannot be such members”.

It was so decided.

9. Mr. DÍAZ GONZÁLEZ said that in the Spanish version of the text, the meaning of the sentence in question did not correspond to the meaning of the English and French texts.

10. The CHAIRMAN said that the Spanish version of the text would be brought into line with the revised English and French versions.

On that understanding, paragraph (3), as amended, was approved.

Paragraphs (4)–(6)

Paragraphs (4)–(6) were approved.

Paragraph (7)

11. Mr. SCHWEBEL said that there appeared to be a typographical error in the second sentence of the English version of the text. The apostrophe after the word “States” should be deleted. Also, in the same sentence the word “an” should read “and”.

It was so decided.

Paragraph (7), as amended, was approved.

Paragraph (8)

12. Mr. SCHWEBEL proposed that the word “trust”, in the last sentence, should be replaced by the word “confidence”.

It was so decided.

Paragraph (8), as amended, was approved.

Paragraph (9)

Paragraph (9) was approved.