

Document:-
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Summary record of the 1696th meeting

Topic:
Other topics

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Paragraph 6

28. Sir Francis VALLAT said that it might be more convenient to record what had happened to the various draft articles referred to the Drafting Committee at the end of chapter VI, rather than in paragraph 6 of the introduction.

29. Mr. USHAKOV proposed that the Commission should authorize the Secretariat to make the necessary changes to the text, with the approval of the Special Rapporteur.

It was so decided.

Paragraph 6 was adopted.

Paragraphs 7 to 12

Paragraphs 7 to 12 were adopted.

Paragraph 13

30. Mr. ALDRICH proposed that the order of the words "new five" in the first sentence of the paragraph should be reversed.

It was so decided.

Paragraph 13, as amended, was adopted.

Paragraph 14

Paragraph 14 was adopted.

Paragraph 15

31. Mr. ALDRICH proposed that, in the interests of clarity, the words "which remained to be set forth in Part III" should be added in parentheses at the end of the second sentence.

It was so decided.

Paragraph 15, as amended, was adopted.

Paragraph 16

Paragraph 16 was adopted.

Paragraph 17

32. Mr. ALDRICH said that the words "he noted" in the first sentence of the paragraph, seemed somewhat out of place. He proposed that the Secretariat and Special Rapporteur should be authorized to make the appropriate changes.

It was so decided.

Paragraphs 18 to 25 were adopted.

Paragraphs 18 to 25

Paragraphs 18 to 25 were adopted.

Paragraph 26, as amended, was adopted.

33. Mr. SUCHARITKUL (Special Rapporteur) said that the second sentence should be divided into two separate sentences, with the first one ending with the words "of the whole subject".

Paragraph 26, as amended, was adopted.

Paragraph 27

34. Mr. USHAKOV said that the inclusion, in footnote 22, of the alternative versions of paragraph 1 of draft article 7 was unnecessary and would simply create confusion.

35. Mr. SUCHARITKUL (Special Rapporteur) said that the revised versions of the draft articles had been based on a lengthy discussion. He had included them in the report in order to give a clear indication of the stage reached in the consideration of the topic and to facilitate the Sixth Committee's consideration of the Commission's report.

36. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) agreed with the view expressed by Mr. Ushakov. The inclusion of the revised versions of the draft articles in the report would tend to create confusion in the Sixth Committee, since it would be assumed that they had been discussed by the Commission, which was not the case. However, he would not object to their retention.

37. Mr. ALDRICH supported the view expressed by Mr. Sucharitul. He noted that the revised versions of the draft articles in question were included only in a footnote, and not in the body of the report itself. However, in the light of the observations made by Mr. Díaz González, it might be preferable to state specifically that the revised versions had not been considered by either the Commission or the Drafting Committee.

It was so decided.

Paragraph 27, as amended, was adopted.

Paragraph 28

Paragraph 28 was adopted.

Chapter VI, as amended, was adopted.

The meeting rose at 1.10 p.m.

1696th MEETING

Wednesday, 22 July 1981, at 10.05 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitul, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Draft Report of the Commission on the Work of its Thirty-third Session (continued)

CHAPTER III. *Question of treaties concluded between States and international organizations or between two or more international organizations (concluded)* (A/CN.4/L.331/Add.3)

B. Draft articles on treaties concluded between States and international organizations or between international organizations (concluded) (A/CN.4/L.331/Add.3)

PART I (INTRODUCTION) (concluded)

Commentary to article 2 (Use of terms) (concluded)

Paragraph 1, subparagraph (d)

The commentary to paragraph 1, subparagraph (d) was approved.

Commentary to article 5 (Treaties constituting international organizations and treaties adopted within an international organization)

Paragraph (4)

1. Mr. REUTER (Special Rapporteur) proposed that, in the second sentence of paragraph (4), the words "an international organization of which another such organization is a member adopts a treaty" should be replaced by "a treaty is adopted within an international organization of which another such organization is a member".

It was so decided.

Paragraph (4), as amended, was approved.

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

Part I, as amended, was adopted.

PART II (CONCLUSION AND ENTRY INTO FORCE OF TREATIES) (concluded)

SECTION 2 (Reservations)

Commentary to Section 2

Paragraph (6)

2. Mr. REUTER (Special Rapporteur) said that the word "la" should be inserted before the word "difficulté" in the French version of the text.

It was so decided.

Paragraph (6), as amended, was approved.

Paragraph (12)

3. Mr. REUTER (Special Rapporteur) proposed that the word "controversé" in the last sentence of the French text should be in the plural.

It was so decided.

Paragraph (12), as amended, was approved.

The commentary to section 2, as amended, was approved.

Commentary to article 19 (Formulation of reservations)

4. Mr. REUTER (Special Rapporteur) proposed that the word "traité", in the last sentence of the French version of the commentary, should be in the plural.

It was so decided.

The commentary to article 19, as amended, was approved.

Commentary to article 20 (Acceptance of and objection to reservations)

5. Mr. REUTER (Special Rapporteur) proposed that the word "les" before the word "inconvenients" in the French text of footnote 28, should be replaced by "des".

It was so decided.

The commentary to article 20, as amended, was approved.

Commentary to articles 21 (Legal effects of reservations and of objections to reservations), 22 (Withdrawal of reservations and of objections to reservations) and 23 (Procedure regarding reservations)

The commentary to articles 21, 22 and 23 was approved.

Section 2, as amended, was adopted.

SECTION 3 (Entry into force and provisional application of treaties)

Commentary to articles 24 (Entry into force) and 25 (Provisional application)

The commentary to articles 24 and 25 was approved.

Section 3 was adopted.

Part II, as amended, was adopted.

PART III (OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES)

SECTION 1 (Observance of treaties)

Commentary to article 26 (Pacta sunt servanda)

The commentary to article 26 was approved.

Part III was approved.

Chapter III, as amended, was adopted.

CHAPTER VIII. *Other decisions and conclusions* (A/CN.4/L.336 and Corr.1 and Add.1)

Programme and methods of work of the Commission (A/CN.4/L.336 and Corr.1)

Paragraphs 1 to 11

Paragraphs 1 to 11 were adopted.

Relations with the International Court of Justice (A/CN.4/L.336/Add.1)

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

Co-operation with other bodies

Paragraphs 3 to 12

Paragraphs 3 to 12 were adopted.

Date and place of the thirty-fourth session

Paragraph 13

6. The CHAIRMAN said that the dates 3 May 1982 and 23 July 1982 should be inserted at the appropriate points in paragraph 13.

Paragraph 13 was adopted.

Representation at the thirty-sixth session of the General Assembly

Paragraph 14

Paragraph 14 was adopted.

International Law Seminar

Paragraphs 15 to 20

Paragraphs 15 to 20 were adopted.

Paragraph 21

7. Following a discussion in which Mr. SUCHA-RITKUL, Sir Francis VALLAT, Mr. REUTER, Mr. FRANCIS (Rapporteur) and Mr. BARBOZA took part, Mr. VEROSTA proposed that the first two sentences, enclosed within brackets, in paragraph 11 of document A/CN.4/L.336 should be added to paragraph 21 and that the relevant footnote on page 7 of the same document should be deleted.

It was so decided.

Paragraph 21, as amended, was adopted.

ANNEX I. Comments of Governments on the draft articles on succession of States in respect of matters other than treaties, adopted by the International Law Commission at its thirty-first and thirty-second sessions

and

ANNEX II. Comments of Governments and principal international organizations on articles 1 to 60 of the draft articles on treaties concluded between States and international organizations or between international organizations, adopted by the International Law Commission at its twenty-sixth, twenty-seventh, twenty-ninth, thirtieth, and thirty-first sessions (A/CN.4/L.338).

Annex I and annex II to the Commission's report were adopted.

CHAPTER II. Succession of States in respect of matters other than treaties**A. Introduction (A/CN.4/L.330)**

Paragraphs 1 to 50

Paragraphs 1 to 50 were adopted.

Paragraph 51

8. Mr. ALDRICH proposed that, in the penultimate sentence, the words "if these articles receive general support in the General Assembly" should be inserted after the word "Accordingly".

It was so decided.

Paragraph 51, as amended, was adopted.

Paragraphs 52 to 72

Paragraphs 52 to 72 were adopted.

Paragraph 73

9. Sir Francis VALLAT expressed reservations with regard to the inclusion of the quotation from the judgement of the International Court of Justice in connection with the *North Sea Continental Shelf* cases, since the quotation was incomplete and was taken out of context.

10. Mr. REUTER proposed that the paragraph should be deleted and that a reference to the judgements of the International Court of Justice in the *Fisheries Jurisdiction* cases of 1974 should be added to footnote 84.

It was so decided.

Paragraph 74

Paragraph 74 was adopted.

Section A, as amended, was adopted.

B. Recommendation of the Commission (A/CN.4/L.330)

Paragraph 75

11. Mr. ALDRICH said that, in his view, the recommendation made by the Commission in paragraph 75 should reflect the amended form of paragraph 51 and provide that, if the draft received broad support in the General Assembly, it should be given the same status as the Vienna Convention. The words "if the draft received broad support in the General Assembly" should therefore be inserted after the words "to recommend that".

12. Mr. YANKOV said that the wording of paragraph 75 was a routine formula used by the Commission in similar circumstances. Obviously, the General Assembly would not convene a conference of plenipotentiaries if it considered that the time had not yet come for the draft articles to serve as a basis for concluding a convention. The fact remained that the Commission had carried out the task entrusted to it and now had to submit the results of its work to the General Assembly, which would decide what action was to be taken. However, the Commission could not in any way prejudge the General Assembly's decision or the reasons on which that decision would be based.

13. Mr. USHAKOV proposed that the Commission should use the wording of the recommendation it had made following the second reading of its draft articles on succession of States in respect of treaties. He emphasized that the General Assembly alone was competent to decide what should be done with the draft, the Commission's recommendation committing itself alone.

14. Sir Francis VALLAT said that article 23 of the Statute of the International Law Commission provided, *inter alia*, that "The Commission may recommend to the General Assembly: . . . (c) To recommend the draft to Members with a view to the conclusion of a convention; (d) To convoke a conference to conclude a convention". The Commission could easily confine itself to one of those types of recommendations by recommending, for example, that the General Assembly should study the draft with a view to the possible conclusion of a convention on the topic. It would be going too far to recommend the convening of a conference, because a number of members of the Commission considered that the draft required further consideration and that it was too early to recommend the convening of a conference of plenipotentiaries.

15. Mr. NJENGA pointed out that, on completion of the second reading of a draft, it was quite normal for the Commission to recommend that the text should be submitted to a diplomatic conference. Naturally, the General Assembly was free to decide, if it so wished, that the Commission's text should be given further study, or that a conference should be convened, or even that the draft should be referred back to the Commission.
16. Mr. DÍAZ GONZÁLEZ said that he experienced no difficulty in accepting paragraph 75, which simply repeated the wording that was customary in similar circumstances. The recommendation contained in the paragraph did not in any way limit the decision-making power of the General Assembly.
17. He would none the less like the word "*celebrar*" in the Spanish version to be replaced by another more appropriate word, such as possibly the word "*elaborar*" or the word "*redactar*".
18. Mr. REUTER proposed that the Commission should recommend that the General Assembly "should study the draft with a view to convening a conference of plenipotentiaries and concluding a convention on the topic". Such wording, which was less emphatic, might be used in future in similar circumstances.
19. Mr. VEROSTA said that he would also prefer more flexible wording, for the Commission did not know what Governments intended to do with the draft.
20. Mr. CALLE Y CALLE supported the proposal made by Mr. Reuter. The function of a conference of plenipotentiaries would not be to study a set of draft articles; rather, it would be to conclude a convention on the basis of a draft which had been prepared by the Commission and submitted to the conference in accordance with a decision taken by the General Assembly.
21. Mr. ŠAHOVIĆ said that he could easily agree to the wording of paragraph 75 without any changes, because it did not go beyond the limits of the Commission's terms of reference.
22. The proposal to alter the wording showed that not all of the members of the Commission were prepared to say that the draft was ready for submission to a diplomatic conference with a view to concluding a convention. In that respect, Mr. Reuter's suggestion paved the way for a consensus in the Commission, since it afforded the possibility of criticizing the draft and correctly reflected the shades of view of all members.
23. After many years of work on the topic, the Commission had to reach an agreement on the follow-up action to be taken, for the draft articles constituted the second part of the Commission's work on succession of States and an international convention had already been adopted on the first part. In a spirit of compromise, he was prepared to agree to the wording proposed by Mr. Reuter.
24. Mr. USHAKOV said that the Commission should not try to find an evasive formula when the choice open to it was either to recommend or not to recommend the convening of a conference. A recommendation that the General Assembly should study the draft with a view to convening a conference would not be enough. The Commission should follow past practice and adopt the same position as it had when it had completed its second reading of the first part of the draft.
25. Mr. ROMANOV (Secretary to the Commission), speaking at the invitation of the Chairman, said that paragraph 75 was consistent with the wording normally used by the Commission to recommend that the General Assembly should convene a conference of plenipotentiaries.
26. Mr. DÍAZ GONZÁLEZ said that, under article 22 of its Statute, the Commission had an obligation to submit any draft articles it adopted on second reading to the General Assembly, which was alone competent to decide whether the text was ready for submission to a conference of plenipotentiaries. A draft adopted on second reading became a draft prepared by the Commission and, with recommendations provided for in article 23 of the Statute, had to be submitted to the General Assembly to inform it of the Commission's work.
27. In view of the importance of the draft under consideration, he could not see any reason why an exception should now be made to past practice in order to delay submission of the text to the General Assembly. The Statute left the Commission no choice but to submit the draft articles to the General Assembly.
28. Sir Francis VALLAT said he recognized the fact that the wording of paragraph 75 would be quite normal if what the Commission wished to do was to recommend that one of its drafts should be submitted to a conference of plenipotentiaries. However, several members of the Commission were of the opinion that the draft was not yet ready to be submitted to such a conference, and hence, the Commission was not in a position to adopt a recommendation to that effect. The wording proposed by Mr. Reuter would nevertheless provide an acceptable solution. It would also be possible to refer in the Commission's report to the disagreement expressed by some members concerning the action to be taken on the text adopted on second reading.
29. Mr. USHAKOV said that he was in favour of retaining paragraph 75 as it stood, because wording different from that adopted for the recommendation concerning the draft articles on succession of States in respect of treaties would constitute discrimination as between special rapporteurs.
30. Sir Francis VALLAT said that the question at issue was not one of discrimination but one of a *de facto* situation. Draft articles were the property of the

Commission, not of the special rapporteurs. Any discrimination would be discrimination by the Commission against itself. Some members of the Commission considered, for good reasons, that the draft articles on succession of States in respect of State property, archives and debts were not yet ready for submission to a conference of plenipotentiaries. However, if the majority of the members of the Commission insisted on retaining the recommendation made in paragraph 75, he suggested that the Commission should follow its normal practice and add, at the end of that paragraph, a footnote which would read: "Certain members reserved their position on this recommendation".

The amendment was adopted.

Paragraph 75, as amended, was adopted.

Section B, as amended, was adopted.

C. Resolution adopted by the Commission (A/CN.4/L.330)

Paragraph 76

31. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) read out the following draft resolution for inclusion in paragraph 76:

"The International Law Commission,

"Having adopted the draft articles on succession of States in respect of State property, archives and debts,

"Desires to express to the Special Rapporteur, Mr. Mohammed Bedjaoui, its deep appreciation of the outstanding contribution he has made to the treatment of the topic by his scholarly research and vast experience, thus enabling the Commission to bring to a successful conclusion its work on the draft articles on succession of States in respect of State property, archives and debts."

32. Mr. BARBOZA. Mr. CALLE Y CALLE and Mr. TABIBI expressed their admiration for the work carried out by the Special Rapporteur.

33. Sir Francis VALLAT associated himself in that praise, and said that it was no fault of the Special Rapporteur if the draft articles fell short of what was required.

The draft resolution was adopted by acclamation.

Paragraph 76, as completed, was adopted.

Section C, as amended, was adopted.

D. Draft articles on succession of States in respect of State property, archives and debts (A/CN.4/L.330/Add.1-3)

PART I (General provisions) (A/CN.4/L.330/Add.1)

Commentary to Part I

The commentary to Part I was approved.

Commentaries to article 1 (Scope of the present articles), article 2 (Use of terms) and article 3 (Cases of succession of States covered by the present articles)

The commentaries to articles 1 to 3 were approved.

Commentary to article [3 bis] (Temporal application of the present articles)

34. Sir Francis VALLAT, referring to footnote 96, relative to the first sentence of paragraph 1 of the commentary and also to paragraph 75 of document A/CN.4/L.330, said he hoped that a cross-reference would also be made to the footnote relative to paragraph 75, which had been adopted by the Commission at the current meeting (see para. 30 above).

The commentary to article [3 bis] was approved, subject to that qualification.

Commentary to article [3 ter] (Succession in respect of other matters)

The commentary to article [3 ter] was approved.

Commentary to article [3 quater] (Rights and obligations of natural or juridical persons)

35. Mr. ALDRICH said the commentary gave the impression that article [3 quater] was exclusively the result of the deletion of article 16, subparagraph (b) (A/CN.4/SR.1692, para. 90), but there were other reasons for inserting it in the draft. For example, article 9 [12], to which he had expressed opposition, might have adverse effects on private property. He therefore suggested that the following sentence should be inserted after the first sentence of the commentary: "other provisions, such as article 9, might be misunderstood as implying some prejudice to the rights of natural or juridical persons".

The commentary to article [3 quater] was approved, subject to the addition of those words.

Part I, as amended, was adopted.

PART II (STATE PROPERTY) (A/CN.4/L.330/Add.2)

SECTION 1 (Introduction)

Commentaries to article [4] (Scope of the articles in the present Part), article [5] (State property), article [6] (effects of the passing of State property), article [7] (Date of the passing of State property) and article [8] (Passing of State property without compensation)

The commentaries to articles [4] to [8] were approved.

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

36. Mr. ALDRICH requested that the commentary to article [9] should be amended to reflect his objection to the adoption of the article, as it was, in his view, unnecessary.

37. Sir Francis VALLAT said that the commentary should also reflect the fact that, during the Commission's discussions, he had expressed opposition to the adoption of article [9].

38. The CHAIRMAN said that, if there were no objections, the commentary to article [9] would be amended to reflect the fact that certain members of the Commission had considered article [9] unnecessary.

It was so decided.

The commentary to article [9], as amended, was approved.

Section 1, as amended, was adopted.

SECTION 2 (Provisions concerning specific categories of succession of States) (A/CN.4/L.330/Add.2 and 3).

Commentary to section 2 (A/CN.4/L.330/Add.2)

The commentary to section 2 was approved.

Commentaries to article [10] (Transfer of part of the territory of a State), article [11] (Newly independent State), article [12] (Uniting of States), and articles [13] (Separation of part or parts of the territory of a State) and 14 (Dissolution of a State)

The commentaries to articles [10] to [14] were approved.

Section 2 was adopted.

Part II was adopted.

PART IV (STATE DEBTS) (A/CN.4/L.330/Add.5)

SECTION 1 (Introduction)

Commentary to article [15] (Scope of the articles in the present Part)

The commentary to article [15] was approved.

Commentary to article [16] (State debt)

39. Sir Francis VALLAT said that, if he had been present when the Commission had voted on article 16, subparagraph (b), (1692nd meeting), he would have voted in favour of retention of that subparagraph.

The commentary to article [16] was approved.

Commentaries to article C (Definition of odious debts), article [17] (Effects of the passing of State debts), article [17 bis] (Date of the passing of State debts) and article [18] (Effects of the passing of State debts with regard to creditors)

The commentaries to articles C, [17], [17 bis] and [18] were approved.

Section 1 was adopted.

The meeting rose at 12.50 p.m.

1697th MEETING

Friday, 24 July 1981, at 10.05 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Co-operation with other bodies (concluded)*

[Item 11 of the agenda]

STATEMENT BY THE OBSERVER FOR THE ARAB COMMISSION FOR INTERNATIONAL LAW

1. The CHAIRMAN invited Mr. Treki, Observer for the Arab Commission for International Law, to address the Commission.

2. Mr. TREKI (Observer for the Arab Commission for International Law) said that the participation of the Arab Commission for International Law in the thirty-third session of the International Law Commission would strengthen relations between the two bodies, help to shed the light on the difficulties of the newly independent countries, including such matters as the legal foundation of the new international economic order, ecological problems and the question of international peace and security, and at the same time open the way for greater contacts between the Arab Commission and such institutions as the Asian-African Legal Consultative Committee.

3. He expressed the hope that the work of the International Law Commission would help to establish equality among the members of the international community, with due regard for the rights of peoples struggling for self-determination and for the harmony of the rules of justice, and that the Commission would be able to achieve its goal of serving the interests of mankind.

4. The CHAIRMAN said that Arab civilization and the Islamic legal system occupied an important place in the world. They were well represented in the Commission, and it was his hope that co-operation with the Arab Commission for International Law would be further strengthened in the future.

Draft Report of the Commission on the work of its thirty-third session (concluded)

CHAPTER II. Succession of States in respect of matters other than treaties (concluded)

D. Draft articles on succession of States in respect of State property, archives and debts (concluded)

PART III (STATE ARCHIVES) (A/CN.4/L.330/Add.4)

General commentary

The general commentary was approved.

SECTION 1 (Introduction)

Commentaries to article [G] (Scope of the articles in the present Part), article [A] (State archives), articles [H] (Effects of the passing of State archives), [I] (Date of the passing of State archives), [J] (Passing of State archives without compensation) and [K] (Absence of effect of a succession of States on the archives of a third State), and article [L] (Preservation of the unity of State archives)

* Resumed from the 1689th meeting.