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Summary record of the 1697th meeting

Topic:
Other topics

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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.

The commentaries to articles [G], [A] and [H] to [L] were approved.

Section 1 was approved.

SECTION 2 (Provisions concerning specific categories of succession of States)

Commentaries to article [B] (Newly independent State), article [C] (Transfer of part of the territory of a State), article [D] (Uniting of States) and articles [E] (Separation of part or parts of the territory of a State) and [F] (Dissolution of a State)

The commentaries to articles [B] to [F] were approved.

Section 2 was adopted.

Part III was adopted.

PART IV (STATE DEBTS) (*concluded*) (A/CN.4/L.330/Add.6)

SECTION 2 (Provisions concerning specific categories of succession of States)

Commentary to section 2

The commentary to section 2 was approved.

Commentary to article [19] (Transfer of part of the territory of a State)

5. Sir Francis VALLAT drew attention to the fact that the example given in paragraph (25) of the commentary to article [19] and the examples given in connection with other articles of the draft related not only to inter-State debts, but also to the private debts of States.

6. He suggested that, since it was not within the Commission's competence to cast doubt on the existence of rules of law, the phrase "if it exists" appearing at the end of the last sentence of paragraph (36) of the commentary should be deleted. He also suggested that the last sentence of paragraph (39), which was neither logical nor accurate, should be brought into line with the text of article [19].

It was so decided.

Paragraphs (36) and (39), as amended, were approved.

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

Commentaries to article [20] (Newly independent State), article [21] (Uniting of States) and articles [22] (Separation of part or parts of the territory of a State) and 23 (Dissolution of a State)

The commentaries to articles [20] to [23] were approved.

Section 2, as amended, was adopted.

Part IV, as amended, was adopted.

Chapter II, as amended, was adopted.

CHAPTER V. *International liability for injurious consequences arising out of acts not prohibited by international law* (A/CN.4/L.333)

A. Introduction

Paragraphs 1 to 3

Paragraphs 1 to 3 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraphs 4 to 6

Paragraphs 4 to 6 were adopted.

Paragraph 7

7. Mr. ALDRICH proposed that, in the third sentence of paragraph 7, the words "at large" should be replaced by the words "left open".

It was so decided.

8. Mr. VEROSTA, also referring to the third sentence, proposed that the word "not" should be inserted between the word "might" and the word "have".

It was so decided.

Paragraph 7, as amended, was adopted.

Paragraphs 8 to 11

Paragraphs 8 to 11 were adopted.

Paragraph 12

9. Sir Francis VALLAT said that, as an editing matter, the Secretariat might try to ensure that paragraph 12 and other paragraphs made a clearer distinction between the point of view of the Special Rapporteur and the points of view expressed by members of the Commission.

Paragraph 12 was adopted, subject to such editing changes.

Paragraphs 13 to 30

Paragraphs 13 to 30 were adopted.

Paragraph 31

10. Mr. ALDRICH said that in paragraph 31, which referred to one of the comments he had made in the Commission's discussions, the words "It was, however, noted" in the second sentence should be replaced by the words "The Special Rapporteur, however, suggested", so as to make it clear that it was the Special Rapporteur who considered that "there were criteria which should meet this need".

It was so decided.

Paragraph 31, as amended, was adopted.

Paragraphs 32 to 34

Paragraphs 32 to 34 were adopted.

Paragraph 35

11. Sir Francis VALLAT noted that the second sentence of paragraph 35, which drew attention to the need for a pragmatic and empirical approach, implied that a considerable amount of information had to be collected on State practice. He was sure that the Special Rapporteur, if he had been present at the

meeting, would have expressed his appreciation for the assistance the Secretariat had given him in the past and would undoubtedly provide him in the future.

Paragraph 35 was adopted.

Paragraphs 36 and 37

Paragraphs 36 and 37 were adopted.

Paragraph 38

12. Mr. YANKOV said he did not think that the words "but most Commission members felt that the topic was valid, and that study should begin at the level of greatest generality" in the first sentence of paragraph 38 accurately reflected the view of most members of the Commission that general theories and academic reasoning would be less helpful at the present stage than a thorough examination of State practice. He therefore suggested that either those words should be deleted or they should be replaced by less categorical wording indicating that, while generalities might be discussed, account should primarily be taken of the practical implications of the topic.

13. Sir Francis VALLAT said that, in his view, the words "greatest generality" referred both to the generality of the rules to be laid down in the draft articles and to the generality of the subject-matter. In his opinion, the Commission tended to think that, initially at least, general rules should be formulated on the basis of a pragmatic study of State practice. Hence, the words "and that study should begin at the level of greatest generality" could be amended along the following lines: "and that, although the study should be aimed initially at the identification of general rules, it should be based upon a pragmatic and empirical examination of the sources".

It was so decided.

Paragraph 38, as amended, was adopted.

Section B, as amended, was adopted.

Chapter V, as amended, was adopted.

CHAPTER VII. Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (A/CN.4/L.335)

A. Introduction

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraphs 3 to 9

Paragraphs 3 to 9 were adopted.

Paragraph 10

14. Mr. ALDRICH pointed out that the words "It was stated in this connection" at the beginning of paragraph 10 might give the impression that the view expressed in that paragraph was that of the Special Rapporteur or that of the Commission as a whole.

15. Mr. YANKOV (Special Rapporteur) said that the view reflected in paragraph 10 had been expressed by several members of the Commission. The words "It was stated by several members of the Commission" should therefore be used.

It was so decided.

Paragraph 10, as amended, was adopted.

Paragraphs 11 to 20

Paragraphs 11 to 20 were adopted.

Paragraph 21

16. Mr. YANKOV (Special Rapporteur) said it had been suggested that a more pragmatic approach should be adopted and, in order to ensure the continuity of the Commission's work on the topic, he was proposing that paragraph 21 should be amended to read:

"Finally, upon the suggestion of the Special Rapporteur, the Commission requested the Secretariat:

(a) to bring up-to-date the compilation of the relevant provisions of multilateral and bilateral treaties in the field of diplomatic and consular law, prepared earlier for the Special Rapporteur;

(b) to solicit from States information on national laws, regulations, procedures and practices as well as information on judicial decisions, arbitral awards and diplomatic correspondence regarding the treatment of the diplomatic courier and the diplomatic bag."

At his request, the Secretariat had already prepared a valuable study on those questions, but the study had to be brought up to date because it covered only the period up to about 1975. The Secretariat would, of course, continue to be responsible for preparing the topical summary of the discussions held in the Sixth Committee and for inquiring into the practice followed by the organizations of the United Nations system in connection with the use of the courier and the bag.

Paragraph 21, as amended, was adopted.

Paragraph 22

17. In reply to a question raised by Sir Francis Vallat, Mr. YANKOV (Special Rapporteur) explained that the second sentence of paragraph 22 had been drafted before the Commission had decided to indicate, in chapter I of its report, the action to be taken on the articles that had been referred to the Drafting Committee. The sentence could therefore be deleted.

It was so decided.

Paragraph 22, as amended, was adopted.

Section B, as amended, was adopted.

Chapter VII, as amended, was adopted.

CHAPTER VIII. Other decisions and conclusions (concluded) (A/CN.4/L.336/Add.2)

A. Relations between States and international organizations (second part of the topic)

Paragraph 1

Paragraph 1 was adopted.

Section A was adopted.

D. Co-operation with other bodies (concluded)

4. ARAB COMMISSION FOR INTERNATIONAL LAW

Subsection 4 was adopted.

Section D was adopted.

Chapter VIII, as amended, was adopted.

18. The CHAIRMAN put to the vote the draft report of the Commission on the work of its thirty-third session as a whole, amended.

The draft report as a whole, as amended, was adopted.

Closure of the Session

19. After an exchange of congratulations and thanks, the CHAIRMAN declared the thirty-third session of the International Law Commission closed.

The meeting rose at noon.
