

Document:-
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Summary record of the 3117th meeting

Topic:
Draft report of the International Law Commission on the work of its sixty-third session

Extract from the Yearbook of the International Law Commission:-
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Paragraph (5)

73. Mr. CAFLISCH (Special Rapporteur) said that, in the French text, the word “viser” was inappropriate and should be replaced by “parler de”.

Paragraph (5), as corrected in the French text, was adopted.

Paragraph (6)

74. Sir Michael WOOD said that the word “third” in the second line should be deleted.

Paragraph (6), as amended, was adopted.

The commentary to article 8, as amended, was adopted.

Article 9. Notification of intention to terminate or withdraw from a treaty or to suspend its operation

Commentary

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

Paragraph (4)

Paragraph (4) was adopted with a minor drafting change in the English text.

Paragraph (5)

Paragraph (5) was adopted.

Paragraph (6)

75. Sir Michael WOOD said that paragraph (6) was unclear. In particular, with regard to the second sentence, he did not see why acknowledgement of receipt of a notification (made by virtue of article 9, paragraph 1) was essential for the right to object to the content of the notification to be triggered (by virtue of paragraph 3). The whole paragraph seemed to suggest that treaty relations were “frozen” or “paralysed”, without actually saying what that meant. If the paragraph was really essential, the Special Rapporteur should provide some clarification on it.

76. Mr. CAFLISCH (Special Rapporteur) stressed that paragraph (6) aimed to contribute to the understanding of article 9, but he would not object if the Commission wished to delete it.

77. The CHAIRPERSON pointed out that the deletion of the paragraph would mean that all the commentary to article 9, paragraph 4, would also be deleted.

78. Mr. SABOIA said that, like Sir Michael, he did not see how acknowledgement of receipt of a notification could have the effect in question. If the second sentence was deleted, the remaining paragraph would be clear.

79. Mr. NOLTE said that perhaps a new wording could be found in informal discussions before the next meeting was held.

80. The CHAIRPERSON proposed that the Commission continue its discussion on paragraph (6) at the next meeting.

It was so decided.

The meeting rose at 1.05 p.m.

3117th MEETING

Thursday, 4 August 2011, at 10 a.m.

*Chairperson: Ms. Marie G. JACOBSSON
(Vice-Chairperson)*

Present: Mr. Caflich, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hmoud, Mr. Huang, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Draft report of the International Law Commission on the work of its sixty-third session (continued)

CHAPTER VI. Effects of armed conflicts on treaties (continued) (A/CN.4/L.785 and Add.1–2)

E. Text of the draft articles on the effects of armed conflicts on treaties (concluded) (A/CN.4/L.785/Add.1–2)

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO (concluded)

1. The CHAIRPERSON invited the Commission to resume its consideration of chapter VI of the draft report and drew attention to the portion of the chapter contained in document A/CN.4/L.785/Add.1.

Article 6. Factors indicating whether a treaty is susceptible to termination, withdrawal or suspension (concluded)

Commentary (concluded)

Paragraphs (1) and (2) (concluded)

2. Mr. VÁZQUEZ-BERMÚDEZ said that, if he might be permitted to revert to the commentary to draft article 6, paragraphs (1) and (2), discussed at the previous meeting, he wished to point out that, as currently drafted, the last sentence of paragraph (1) implied that all the criteria which might assist in ascertaining whether the treaty was susceptible to termination, withdrawal or suspension were external to it, which was not the case. He proposed that the last sentence should be redrafted to read: “The draft article highlights certain criteria, including certain criteria external to the treaty...”. In the light of that change to paragraph (1), the words “external to the treaty” should be deleted from the second sentence of paragraph (2).

The additional amendments to paragraphs (1) and (2) were adopted.

The commentary to article 6, as amended, was adopted.

Article 9. Notification of intention to terminate or withdraw from a treaty or to suspend its operation (concluded)

Commentary (concluded)

Paragraph (6) (*concluded*)

3. The CHAIRPERSON recalled that paragraph (6) of the commentary to draft article 9 had been deferred pending some redrafting. She invited the Special Rapporteur to read out the proposed new text.

4. Mr. CAFLISCH (Special Rapporteur) proposed that paragraph (6) read:

“A notification made by a State party under paragraph 1 takes effect when it has been received by the other State party or States parties, unless the notification provides for a subsequent date (para. 2). If no objection is received within a reasonable period of time, the notifying State may take the measure indicated in the notification (para. 3). If an objection is received, the issue will remain open between the States concerned until there is a diplomatic settlement pursuant to paragraph 4.”

Paragraph (6), as amended, was adopted.

Paragraph (7)

Paragraph (7) was adopted.

The commentary to article 9, as amended, was adopted.

Article 10. Obligations imposed by international law independently of a treaty

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

The commentary to article 10 was adopted.

Article 11. Separability of treaty provisions

Commentary

Paragraph (1)

5. Mr. GAJA said that he had concerns about the wording of the second sentence. First of all, it referred to practice recognized by the Commission that was not elaborated on. Furthermore, it was not clear from the phrase “the (negative) effect of an armed conflict on some treaties is only partial” that the separability of treaty provisions could work both ways: in favour of either termination or continuation of the treaty, depending on the circumstances. Since the paragraph would read more clearly without the second sentence, he proposed its deletion.

Paragraph (1), as amended, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

The commentary to article 11, as amended, was adopted.

Article 12. Loss of the right to terminate or withdraw from a treaty or to suspend its operation

Commentary

Paragraph (1)

6. Sir Michael WOOD, referring to the last sentence, proposed that the words “a minimum of good faith must prevail” should be replaced by “the principle of good faith continues to apply”.

7. Mr. CAFLISCH (Special Rapporteur) said that he would prefer to retain the original wording of the sentence, since in times of armed conflict the precepts of good faith were not always borne in mind. In addition, the first sentence should refer to draft article 12, not draft article 11.

Paragraph (1) was adopted with that correction.

Paragraph (2)

8. Mr. CAFLISCH (Special Rapporteur) proposed that, at the beginning of the paragraph, the words “To provide” should be replaced by “To make clear”.

Paragraph (2), as amended, was adopted.

Paragraph (3)

9. Mr. CAFLISCH (Special Rapporteur) proposed that, in the French text, the words “*relativement clairement*” should be replaced by the words “*assez clairement*”.

Paragraph (3) was adopted with that amendment to the French text.

Paragraph (4)

Paragraph (4) was adopted.

The commentary to article 12, as amended, was adopted.

Article 13. Revival or resumption of treaty relations subsequent to an armed conflict

Commentary

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to article 13 was adopted.

PART THREE.

MISCELLANEOUS

Article 14. Effect of the exercise of the right to self-defence on a treaty

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

10. Sir Michael WOOD said that the clause in the second sentence “which only applies to States” did not seem necessary and proposed its deletion.

Paragraph (3), as amended, was adopted.

Paragraph (4)

11. Mr. CAFLISCH (Special Rapporteur) proposed the deletion of the whole paragraph, since it was unnecessary and unnecessarily controversial.

Paragraph (4) was deleted.

Paragraph (5)

Paragraph (5) was adopted.

The commentary to article 14, as amended, was adopted.

Article 15. Prohibition of benefit to an aggressor State

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

12. Mr. VÁZQUEZ-BERMÚDEZ said that the paragraph was too long and proposed that it be divided into two separate paragraphs after the end of the third sentence.

13. Mr. CAFLISCH (Special Rapporteur) endorsed that proposal.

14. The CHAIRPERSON said she took it that the proposal by Mr. Vázquez-Bermúdez was acceptable to the Commission. The subsequent paragraphs would be renumbered accordingly in the final text.

It was so decided.

15. Mr. VÁZQUEZ-BERMÚDEZ said that in the fifth sentence he questioned the appropriateness of the phrase “As a general rule” before the words “it will claim the right anyway”; it was a phrase normally used in the Commission’s texts when formulating a legal rule or principle. He proposed that the sentence begin: “It may happen that the State characterized as an aggressor will claim the right anyway”.

16. Mr. CAFLISCH (Special Rapporteur) said that he favoured the more neutral formulation: “It may claim the right anyway”.

Paragraph (2), as divided and as amended by the Special Rapporteur, was adopted.

Paragraph (3)

Paragraph (3) was adopted.

Paragraph (4)

17. Sir Michael WOOD proposed deleting the mention of Article 2, paragraph 4, with reference to the Charter of the United Nations for the sake of consistency with the text of draft article 15.

Paragraph (4), as amended, was adopted.

Paragraph (5)

18. Mr. CAFLISCH (Special Rapporteur) proposed that the verb “attained” be replaced by “derived”.

Paragraph (5), as amended in the English version, was adopted.

The commentary to article 15, as amended, was adopted.

Article 16. Decisions of the Security Council

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

19. Sir Michael WOOD, referring to the second sentence, proposed that the phrase “duties based on binding decisions by United Nations bodies” be replaced by “obligations flowing from binding decisions”, which was more in keeping with the language used in Article 103 of the Charter of the United Nations.

20. Mr. CAFLISCH (Special Rapporteur) said that he could agree to that proposal, although he saw no need to draw a distinction between duties and obligations.

Paragraph (2), as amended, was adopted.

Paragraph (3)

Paragraph (3) was adopted.

The commentary to article 16, as amended, was adopted.

Article 17. Rights and duties arising from the laws of neutrality

Commentary

Paragraph (1)

21. Mr. CAFLISCH (Special Rapporteur) proposed that, in the second sentence of the French text, the words “*qui visait plus précisément*” be replaced by the words “*qui se référerait plus spécifiquement*”.

Paragraph (1) was adopted with that amendment to the French text.

Paragraph (2)

Paragraph (2) was adopted.

The commentary to article 17, as amended, was adopted.

Article 18. *Other cases of termination, withdrawal or suspension*

Commentary

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

The commentary to article 18 was adopted.

The commentaries to the draft articles on the effects of armed conflicts on treaties, as a whole, as amended, were adopted.

22. The CHAIRPERSON invited the Commission to consider the portion of chapter VI of the draft report contained in document A/CN.4/L.785/Add.2.

ANNEX

INDICATIVE LIST OF TREATIES REFERRED TO IN DRAFT ARTICLE 7

Commentary

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

23. Mr. VÁZQUEZ-BERMÚDEZ, referring to the first sentence, which began, “The effect of such an indicative list is to create a set of weak and rebuttable presumptions”, proposed deleting the phrase “weak and rebuttable”. Since all presumptions were rebuttable, the use of the adjective was redundant; the adjective “weak” also seemed inappropriate when referring to the types of treaties listed.

24. Mr. CAFLISCH (Special Rapporteur) said that he could agree to the deletion of the adjective “weak”, but not of the adjective “rebuttable”, because there were rebuttable and non-rebuttable presumptions.

25. Mr. HMOUD recalled that the phrase “weak and rebuttable presumptions” came from the first report on the topic and had not previously been contested.

26. Mr. VÁZQUEZ-BERMÚDEZ recalled that his expression of concern about the matter on first reading of the draft articles had given rise to discussion.

27. Mr. CANDIOTI said that, to his recollection, when the matter had been discussed by the Drafting Committee, the intent had not been to establish legal presumptions. He could therefore not accept the idea that the examples of treaties given in the indicative list constituted presumptions.

28. Mr. SABOIA proposed the alternative wording: “a set of presumptions, some of which may be rebuttable”.

29. Mr. CAFLISCH (Special Rapporteur) said that he could not accept that proposal, since it might indicate indecisiveness on the part of the Commission. He stated his preference for his original proposal to delete the words “weak and”.

Paragraph (2) was adopted with the amendment proposed by the Special Rapporteur.

Paragraphs (3) and (4)

Paragraphs (3) and (4) were adopted.

(a) *Treaties on the law of armed conflict, including treaties on international humanitarian law*

Paragraph (5)

Paragraph (5) was adopted.

Paragraph (6)

30. Sir Michael WOOD said that it was not clear from the statement by the General Counsel of the United States Department of Defense quoted in the second sentence what he was responding to in the phrase “the treaty cannot properly be so construed”.⁴³⁰ It would be helpful if the Special Rapporteur could provide further context to clarify the General Counsel’s opinion.

31. Mr. GAJA said that the General Counsel’s comments concerned the question of whether the Comprehensive Nuclear Test-Ban Treaty was also meant to apply in time of war.

32. Mr. SABOIA said that it would be dangerous to take a position in a commentary on such a sensitive issue, and one which, in any case, was not relevant to the subject under consideration. He therefore proposed that paragraph (6) should be deleted.

33. Mr. CAFLISCH (Special Rapporteur) said that the question of whether a test-ban treaty could be construed as applying in time of war was indeed a delicate issue, like most questions under the topic, but a relevant one. The case of *Karnuth v. United States*, from which the quotation was taken, was a classic in the field. He therefore disagreed with Mr. Saboia’s proposal.

34. Mr. VÁZQUEZ-BERMÚDEZ said that he shared the concerns expressed by Mr. Saboia with regard to the inclusion of the paragraph. Even though the passage at issue was a quotation, it should not be included if the Commission had reservations about it.

35. Mr. VARGAS CARREÑO said that the paragraph raised extremely serious issues. In particular, the presumption in the final sentence that there was no prohibition on the use of nuclear weapons in wartime was highly debatable. He therefore fully supported Mr. Saboia’s proposal to delete the paragraph.

36. Mr. CANDIOTI said that he agreed with the views expressed by Mr. Saboia, Mr. Vargas Carreño and Mr. Vázquez-Bermúdez. The paragraph, which dealt with a delicate issue, was not essential to the argument and should be deleted.

37. Mr. CAFLISCH (Special Rapporteur) said that he was surprised by the reactions to the paragraph, which had not been contested on first reading.

⁴³⁰ M. Whiteman (ed.), *Digest of International Law*, vol. 14, Washington, D.C., Department of State publications, 1970, Response of the General Counsel of the United States Department of Defense to a question from Senator Kuchel during the hearings on the proposed nuclear test ban treaty, p. 510.

38. Sir Michael WOOD said that it was his understanding that the comments quoted in the paragraph concerned the interpretation of the treaty rather than its continuance or termination in the event of armed conflict. That being the case, he supported the deletion of the paragraph.

39. Mr. VASCIANNIE said that the passage quoted in paragraph (6) was meant to illustrate one instance among many of State practice with regard to the principle in question. It might therefore be possible to delete the reference to that particular opinion and to replace it with a less controversial example. Alternatively, he would have no objection to simply deleting the whole paragraph, since it touched on what were apparently contentious issues.

40. Mr. CAFLISCH (Special Rapporteur) said that he was opposed to the deletion of paragraph (6), but if the majority of members decided on that course of action, he would bow to that decision, although he did not agree with it.

41. Mr. SABOIA said that he was concerned not so much by the fact that the paragraph in question referred to the Comprehensive Nuclear Test-Ban Treaty, but by the idea that, in adverting to the opinion of the United States, the Commission might seem to be endorsing it, and that was something with which he could not agree.

42. Mr. MURASE asked for confirmation that the United States had ratified the treaty.

43. Mr. GAJA said that the treaty in question was the Moscow treaty of 1963, properly, the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, which had been signed and ratified by the United States. The quotation had been included, not for the construction that the General Counsel had placed on that particular treaty, but for the general principle he mentioned concerning treaties expressly applicable in time of war. Since the opinion of the General Counsel concerning the manner in which the treaty should be construed reflected the position of only one of the parties, it could be omitted, and its omission would not alter the general flow of the argument in the commentary.

44. Mr. MURASE said that, since the United States had signed and ratified the treaty, paragraph (6) could be retained.

45. Mr. McRAE said that, if the text of that paragraph of the commentary was not a vital part of the commentary and the reason for its inclusion was so unclear that it had to be explained to the members of the Commission, it should be deleted.

46. Mr. PETRIČ said that, since the text in question had reached its second reading and the Commission was taking a position different from that which it had adopted at first reading, an indicative vote should be taken.

47. Sir Michael WOOD suggested, by way of a compromise, deleting the last sentence of the quotation, which was controversial and not relevant to the issue, while retaining the rest of the quotation, which made an

important point concerning the possible application of the rule that war might suspend or annul the operation of treaties between the warring parties.

48. Mr. SABOIA said that he must insist on the deletion of paragraph (6) in its entirety and agreed that a vote should be taken.

An indicative vote was taken by show of hands.

49. The CHAIRPERSON said that, according to the indicative vote, 18 members were in favour of deleting paragraph (6) in its entirety and 2 members were against. While she had not participated in the vote she was also in favour of the deletion of the paragraph.

Paragraph (6) was deleted.

Paragraphs (7) and (8)

Paragraphs (7) and (8) were adopted.

(b) *Treaties declaring, creating or regulating a permanent regime or status or related permanent rights, including treaties establishing or modifying land and maritime boundaries*

Paragraphs (9) to (15)

Paragraphs (9) to (15) were adopted.

(c) *Multilateral law-making treaties*

Paragraph (16)

50. Sir Michael WOOD said that, in the interests of readability, the opening phrase, "Law-making treaties may be defined as follows" should be replaced with "Law-making treaties have been defined as follows".

Paragraph (16), as amended, was adopted.

Paragraph (17)

51. Mr. CAFLISCH (Special Rapporteur) said that, to align the English text with the French, the word "contour" in the first sentence should be replaced with "definition".

Paragraph (17), with that amendment to the English text, was adopted.

Paragraphs (18) to (20)

Paragraphs (18) to (20) were adopted.

Paragraph (21)

Paragraph (21) was adopted with a minor drafting change.

Paragraph (22)

Paragraph (22) was adopted.

(d) *Treaties on international criminal justice*

Paragraphs (23) to (25)

Paragraphs (23) to (25) were adopted.

Paragraph (26)

52. Sir Michael WOOD said that the final phrase in the last sentence, “and, as such, *must* be regarded as surviving armed conflicts”, should be deleted, since, although the *jus cogens* obligations would, of course, continue to apply, it was not necessarily the case that the treaty as such would survive an armed conflict.

Paragraph (26), as amended, was adopted.

(e) *Treaties of friendship, commerce and navigation and agreements concerning private rights*

Paragraph (27)

Paragraph (27) was adopted with a minor drafting change.

Paragraph (28)

53. Sir Michael WOOD said that in the first sentence the phrase “which put an end to the War of Independence” was inaccurate and should be deleted.

Paragraph (28), as amended, was adopted.

Paragraphs (29) to (47)

Paragraphs (29) to (47) were adopted.

(f) *Treaties for the international protection of human rights*

Paragraph (48)

54. Sir Michael WOOD said that, for the sake of accuracy, the phrase in the third sentence “preceded the emergence of international human rights rules” should be replaced with “preceded the conclusion of international human rights treaties”, since it was the treaties that were relevant in the context.

Paragraph (48), as amended, was adopted.

Paragraph (49)

Paragraph (49) was adopted.

Paragraph (50)

55. Sir Michael WOOD said that the last sentence of the quotation was not essential to the line of argument. Furthermore, contrary to what the sentence stated, it was not the case that all non-derogable human rights provisions codified *jus cogens* norms. He therefore proposed that the last sentence be deleted.

Paragraph (50), as amended, was adopted.

Paragraph (51)

56. Mr. CAFLISCH (Special Rapporteur) said that the word “treaty” should be inserted before “provisions” in the third sentence.

Paragraph (51), as amended, was adopted.

Paragraph (52)

Paragraph (52) was adopted.

(g) *Treaties relating to the international protection of the environment*

Paragraph (53)

Paragraph (53) was adopted.

Paragraph (54)

57. Mr. CAFLISCH (Special Rapporteur) said that the advisory opinion of the ICJ on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* should be referred to by its full title.

Paragraph (54), as amended, was adopted.

Paragraphs (55) and (56)

Paragraphs (55) and (56) were adopted.

(h) *Treaties relating to international watercourses and related installations and facilities*

Paragraphs (57) to (59)

Paragraphs (57) to (59) were adopted.

Paragraph (60)

58. Mr. CAFLISCH (Special Rapporteur) said that, in the second sentence, it would be more accurate to refer to “the Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles) as it relates to the Kiel Canal” rather than “the Treaty of Versailles Relating to the Kiel Canal”. As the paragraph contained no reference to the Convention between Austria-Hungary, France, Germany, Great Britain, Italy, the Netherlands, Russia, Spain and Turkey respecting the Free Navigation of the Suez Canal (Constantinople Convention), he proposed that one be added.

Paragraph (60), as amended, was adopted.

Paragraphs (61) to (63)

Paragraphs (61) to (63) were adopted.

(i) *Treaties relating to aquifers and related installations and facilities*

Paragraphs (64) to (66)

Paragraphs (64) to (66) were adopted.

(j) *Treaties which are constituent instruments of international organizations*

Paragraphs (67) and (68)

Paragraphs (67) and (68) were adopted.

(k) *Treaties relating to the international settlement of disputes by peaceful means, including resort to conciliation, mediation, arbitration and judicial settlement*

Paragraphs (69) to (71)

Paragraphs (69) to (71) were adopted.

(l) *Treaties relating to diplomatic and consular relations*

Paragraphs (72) to (77)

Paragraphs (72) to (77) were adopted.

Paragraph (78)

59. Mr. GAJA said that, in the fourth sentence, the identity of “The defendants” in question was unclear.

60. Mr. CAFLISCH (Special Rapporteur) said that the defendants were the Federal Government of the United States. He therefore proposed that, in the fourth sentence, the words “The defendants” be replaced with “The Federal Government”.

Paragraph (78), as amended, was adopted.

The commentary to the annex containing the indicative list of treaties referred to in draft article 7, as amended, was adopted.

C. Recommendation of the Commission (continued)

61. The CHAIRPERSON recalled that the Commission had left uncompleted paragraph 9 in document A/CN.4/L.785 concerning its recommendation to the General Assembly with respect to the draft articles. The Special Rapporteur’s proposal for the recommendation was contained in paragraph 15 of the note on the recommendation to be made to the General Assembly about the draft articles on the effects of armed conflicts on treaties (A/CN.4/644).

62. Mr. CAFLISCH (Special Rapporteur) said that in his note he suggested that the Commission should not propose to the General Assembly the immediate convening of a diplomatic conference by the General Assembly. His position was dictated by concern about what might ensue if such a conference failed, or if too few States ratified the treaty produced by it. He realized that the Commission’s principal responsibility was to prepare the texts of treaties to promote the progressive development and codification of international law. He also acknowledged that the Commission must not allow itself to be discouraged by the difficulties sometimes encountered in its work on progressive development and codification when it submitted proposals to the General Assembly. If the majority of members disagreed with the suggestions contained in his note and decided to suggest to the General Assembly that it should contemplate the convening of a diplomatic conference in the near future, he would, however, go along with that decision. In any case, the final decision on that matter lay with the General Assembly.

63. Mr. DUGARD wondered whether, as the Special Rapporteur was not advocating the convocation of a diplomatic conference at that stage, there was not another avenue open to the Commission, namely the drafting of a convention by the Sixth Committee, since there had been a precedent for that step. The convocation of a diplomatic conference was a major undertaking, but it might be possible for the Sixth Committee itself to convert the draft articles into a convention.

64. Mr. CAFLISCH (Special Rapporteur) said that that manner of proceeding was quite possible, because that was how the United Nations Convention on Jurisdictional Immunities of States and Their Property and the

Convention on the Law of the Non-Navigational Uses of International Watercourses had been adopted.

65. Mr. CANDIOTI said that he supported the prudent approach outlined in the Special Rapporteur’s note, because at the sixty-fifth session of the Sixth Committee one delegation had even suggested that the topic was not suitable for codification and should be dropped. The proposal made in paragraph 15 of the note was therefore wise. It was regrettable that the suggestion which he had made the previous year, that a preamble should be appended to the draft articles, had been rejected, because a preamble could shed light on the reasons behind the Commission’s work.

66. Sir Michael WOOD said that he agreed with the need for some degree of caution. In principle, the suggestion made in paragraph 15 was appropriate, but the Commission should look at the exact wording of the recommendation that it had made to the General Assembly on the draft articles on responsibility of States for internationally wrongful acts,⁴³¹ because it had not gone quite as far as subparagraph (ii) of paragraph 15. It was not for the Commission to say whether the General Assembly should convene a conference, or whether the Sixth Committee should turn the draft articles into a convention.

67. Mr. PETRIČ said that he agreed with Mr. Candiotti that, given the sensitive and far-reaching nature of the topic, the draft articles required a preamble explaining their purpose. He also agreed with the proposals made in paragraph 15 of the note, possibly amended along the lines suggested by Sir Michael.

68. Mr. CAFLISCH (Special Rapporteur) said that, while he had no objection to the inclusion of a preamble, time was running short and a preamble would have to be drafted, discussed, referred to the Drafting Committee and debated again before it could be adopted. On the other hand, it would be very easy to refine the proposals contained in paragraph 15 of his note.

69. Sir Michael WOOD said that, although he had no objection in principle to the inclusion of a preamble, he shared the Special Rapporteur’s view that the process would take some time and he also feared that it would reopen the debate on some of the provisions. In practical terms, it was therefore a little late to consider a preamble.

70. The CHAIRPERSON suggested that the Commission should defer consideration of its recommendation and that, in the meantime, members should reflect on appropriate wording for subparagraph (ii) of the proposal contained in paragraph 15 of the Special Rapporteur’s note (A/CN.4/644).

The meeting rose at 11.30 a.m.

⁴³¹ *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 26 et seq., para. 73.