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Summary record of the 1359th meeting

Topic:
Other topics

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F. REPRESENTATION AT THE THIRTIETH SESSION OF THE GENERAL ASSEMBLY

G. GILBERTO AMADO MEMORIAL LECTURE and

H. INTERNATIONAL LAW SEMINAR

Sections F, G and H were approved.

The meeting rose at 6 p.m.

1359th MEETING

Friday, 25 July 1975, at 10.25 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Castañeda, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Raman-gasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Draft report of the Commission on the work of its twenty-seventh session

(A/CN.4/L.232/Add.2)

(continued)

Chapter II

STATE RESPONSIBILITY

(resumed from the previous meeting)

B. DRAFT ARTICLES ON STATE RESPONSIBILITY *(continued)*

1. The CHAIRMAN invited the Commission to consider the commentary to article 11 paragraph by paragraph.

Commentary to article 11

(Conduct of persons not acting on behalf of the State) (A/CN.4/L.232/Add.2)

Paragraph (1)

2. Mr. KEARNEY suggested that the word "indication" in the first sentence be replaced by the word "presentation".

It was so agreed.

3. Mr. AGO (Special Rapporteur), replying to a comment by Mr. KEARNEY, suggested that the phrase "and whose exclusion from attribution to the State is still implicit" be deleted from the last sentence.

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

4. Sir Francis VALLAT said that it would not be clear to the majority of common lawyers that words such as "natural persons who have the status of organs of the State", which appeared in the last sentence, referred to persons such as soldiers, policemen and the like.

5. Mr. AGO (Special Rapporteur) suggested that he include a foot-note explaining the meaning of the phrase mentioned by Sir Francis Vallat.

It was so agreed.

6. Mr. KEARNEY suggested that the words "or quasi-public" be inserted after the word "parastatal".

It was so agreed.

7. Sir Francis VALLAT said that he had supported Mr. Kearney's suggestion because he believed that the Commission's report should be written in language which would be clear to persons other than experts in international law.

8. Mr. KEARNEY said that the phrase "have nothing to do with their belonging to the machinery of the State" in the last sentence seemed too sweeping.

9. Mr. AGO (Special Rapporteur) proposed that it be replaced by the phrase "and have no connexion with the machinery of the State".

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraph (3)

Paragraph (3) was approved.

Paragraph (4)

10. Mr. KEARNEY, referring to the sixth sentence of the paragraph, said that, despite the presence of a saving clause, it was unrealistic to impose on States the obligation to afford "effective" protection to "ordinary nationals" of a foreign State. He suggested that the word "effective" be deleted.

It was so agreed.

11. Mr. KEARNEY said that the language of the ninth sentence was too strong.

12. Sir Francis VALLAT suggested that the word "would" in the second part of the sentence be replaced by the word "might". He further suggested that the words "of one of the other" be deleted from the tenth sentence.

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraphs (5)-(8)

Paragraphs (5)-(8) were approved.

Paragraph (9)

Paragraph (9) was approved, subject to redrafting of the fourth sentence.

Paragraph (10)

13. Mr. KEARNEY said that he did not find the fifth sentence of the paragraph very clear.

14. Sir Francis VALLAT said he was concerned that the paragraph seemed to deal with both primary and what might be called "tertiary" rules, concerning methods of reparation for breach. He wondered whether the passages on remedy for breach were really necessary.

15. Mr. AGO (Special Rapporteur) said that the passages in question were extremely important. A number of writers believed that the wrongful act attributed to

the State was the act of the private person and not the omission of the organ, and based their argument on the fact that the amount of reparation was calculated according to the damage caused by the private individual.

16. The CHAIRMAN suggested that consultations should be held on the point raised by Mr. Kearney and that the matter raised by Sir Francis Vallat should be further discussed during the second reading of the draft articles.

It was so agreed.

Paragraph (10) was approved on that understanding.

Paragraphs (11)-(16)

Paragraphs (11)-(16) were approved.

Paragraph (17)

Paragraph (17) was approved, subject to redrafting of the second sentence.

Paragraphs (17)-(37)

Paragraphs (17)-(37) were approved.

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

Section B, as amended, was approved.

Chapter II of the draft report, as a whole, as amended, was approved.

Chapter VI

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

(Resumed from the previous meeting)

B. PROGRAMME AND ORGANIZATION OF WORK

17. The CHAIRMAN invited the Commission to consider the new section B (Programme and Organization of Work) which would combine the former sections B (Long-term programme of work) and C (Organization of future work).

18. After a discussion in which Mr. KEARNEY, Mr. USHAKOV, Mr. SETTE CÂMARA, Sir Francis VALLAT, Mr. USTOR, Mr. AGO, Mr. ŠAHOVIĆ and Mr. CASTAÑEDA took part, Mr. KEARNEY, in accordance with the Commission's instructions at the previous meeting,¹ proposed the following text for inclusion in section B (Programme and Organization of Work), immediately after the paragraph dealing with the list of topics in the Commission's current programme of work. The proposed text would read :

Following discussion in the Commission, a planning group was established in the Enlarged Bureau to study the functioning of the Commission and formulate suggestions regarding its work. The Group was composed of Mr. Elias, Mr. Kearney (Chairman), Mr. Sette Câmara, Mr. Tsuruoka and Mr. Ushakov.

As an initial project the Group undertook a review of the existing work load of the Commission with a view to proposing general goals towards which the Commission might direct its efforts. On the basis of

this review, the Group concluded that work on the most-favoured-nation clause had reached the point at which it should be possible to complete work on the set of articles in first reading at the 1976 session. As this session will bring to an end the term of office of the present members of the Commission, the Group suggested that every effort be made to achieve the goal of the first reading of articles on this subject for submission to the thirty-first session of the General Assembly.

The Group devoted considerable study to the two priority topics on its agenda—State responsibility and succession of States in respect of matters other than treaties. As the introduction to chapter II of this report points out, three chapters of the First Part of the articles on State responsibility remain to be considered. These are:

Chapter III—Breach of an international obligation

Chapter IV—Participation by other States in an internationally wrongful act of a State

Chapter V—Circumstances precluding wrongfulness and attenuating or aggravating circumstances.

The First Part when completed will contain a complete statement of the most fundamental aspects of State responsibility and will constitute an integrated whole. The Group considered that, in view of the high priority assigned to this topic by the General Assembly, the first reading of this set of articles should be completed during the first part of the term of office of the members elected to the Commission in 1976. This would permit submission of the set of articles to Governments and the receipt of governmental comments in sufficient time to permit the second and final reading of the articles to take place prior to the expiration of that term of office. This would mean final completion of these articles by 1981 at the latest, but with the possibility of earlier completion.

With regard to succession of States in respect of matters other than treaties, the Group's review of this topic resulted in the conclusion that the most important aspects of the topic, from the viewpoint of the present needs of international law, are public property, upon which considerable progress has already been achieved in the area of State property, and public debts. Concentration upon these aspects would permit the drafting of a balanced set of articles that, when adopted in treaty form, would provide a basis for dealing with the questions which ordinarily present the majority of problems regarding non-treaty matters arising in the course of a succession of States. Having regard to the complicated and difficult issues involved in this work, the Group suggested that completion of a set of articles in respect of succession of States to public property and public debts in first reading should be a minimum goal for the 1976-1981 term of the Commission.

The fourth topic under active consideration, the question of treaties concluded between States and international organizations or between two or more international organizations has been moving ahead at a good rate of progress. The Group, therefore, con-

¹ See para. 23.

sidered that establishment of the goal of completion of the second reading of a set of articles on this subject by or prior to 1981 was justified.

Response to the Commission's questionnaire on the non-navigable uses of international watercourses had not been sufficient up to the present to permit determination of the scope and content of the work on this topic. The Group suggested that consideration of any goal for this topic should be deferred until the 1976 session of the Commission.

The Enlarged Bureau submitted these suggestions of the Group to the Commission for consideration. After reviewing them the Commission reached the conclusion that while the adoption of any rigid schedule of operations would be impracticable, the use of the goals in planning its activities would afford a helpful framework for decision-making. The Commission also endorsed continued activity by a planning group to review periodically the progress of the Commission's work, as well as the suggestion that, in order to assist the Group in its work, members should submit proposals regarding the activities and needs of the Commission for study by the Group.

19. After some discussion, the CHAIRMAN said he took it that the Commission approved section B (Pro-

gramme and Organization of Work) of chapter VI of the draft report, in the form proposed by Mr. Kearney.

It was so agreed.

Chapter VI of the draft report, as a whole, as amended, was approved.

The draft report of the Commission on the work of its twenty-seventh session, as a whole, as amended, was adopted.

**Expression of appreciation to Mr. Teslenko,
Deputy Director of the Codification Division**

20. *On the proposal of the CHAIRMAN, the Commission expressed to Mr. N. Teslenko, Deputy Director of the Codification Division of the Office of Legal Affairs, who would shortly be retiring, its deep appreciation of his devoted service to the Commission over many years.*

Closure of the session

21. After an exchange of congratulations and thanks, the CHAIRMAN declared the twenty-seventh session of the International Law Commission closed.

The meeting rose at 12.45 p.m.