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Summary record of the 1264th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1974, vol. I

responsibility was engaged and the United Kingdom had agreed to pay compensation to Romania.

15. The case of an organ placed unlawfully at the disposal of a State had been mentioned by Mr. Tammes.[7] That very exceptional case might occur if a State placed troops at the disposal of another State when that action was specially prohibited by a treaty. Reference had also been made to the case in which a State placed its territory at the disposal of another State, allowing it to station its armed forces there for the purpose of committing aggression against a third State. But so long as no act of aggression occurred, there was no breach of an international obligation, unless a peace treaty provided, for example, that the stationing of foreign troops in the territory was prohibited. In his opinion it was not necessary to make express provision for that situation, which seemed to come within the scope of article 5.

16. It would be for the Drafting Committee to find suitable wording to cover exactly the situations to which article 9 was applicable.

17. Mr. BILGE thought it would be inadvisable to introduce into article 9 the notion of "public institutions separate from the State", which was the subject of article 7. Such institutions had a separate personality only in internal law. If a town placed its town-planning department at the disposal of a foreign town, special relations were established between the two countries concerned, not between the two towns; the arrangement would override internal distinctions.

18. Mr. USHAKOV said that most of the examples given during the discussion were imaginary, and it would be better to keep to existing cases. When private persons were sent abroad under an economic or cultural assistance programme, or to carry out relief operations, they did not exercise any State power of the beneficiary State. But article 9 was concerned with the exercise of State power, that was to say, essentially with the case of the loan of armed forces. He hoped that the Drafting Committee would find an adequate formula.

19. Mr. SETTE CÂMARA said that the objection raised by Mr. Bilge would also apply to article 7. If it was considered that, for purposes of international law, only the relations between States were significant, and that the differences between organs, public corporations and territorial public entities were unimportant except in internal law, then article 7 might not be necessary. The suggestions made regarding article 9 seemed reasonable, however, and if article 7 was to be retained with a specific reference to the kind of situations covered, the same should be done in the case of article 9.

20. Mr. AGO (Special Rapporteur) said there were two possible courses: to explain in the commentary that article 9 could apply to "organs of public institutions separate from the State", or to amend the text of the article accordingly.

21. In reply to Mr. Ushakov's last comment, he pointed out that there could indeed be an exercise of prerogatives of State power in cases other than those of the loan of armed forces or police. For example, when health services were sent abroad during an epidemic, their first step was sometimes to restrict freedom of movement in a particular area; such action might also affect the freedom of movement of foreign diplomats.

22. The CHAIRMAN suggested that draft article 9 should be referred to the Drafting Committee for further consideration.

It was so agreed.[8]

The meeting rose at 11.20 a.m.

[7] See 1261st meeting, para. 25.

[8] For resumption of the discussion see 1278th meeting, para. 19.

1264th MEETING

Friday, 24 May, 1974, at 10.05 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Tenth session of the Seminar on International Law

1. The CHAIRMAN invited Mr. Raton, the Senior Legal Officer in charge of the Seminar on International Law, to address the Commission.

2. Mr. RATON (Secretariat) said that Monday, 27 May, would be the date not only of the meeting commemorating the Commission's twenty-fifth anniversary, but also of the opening of the tenth session of the Seminar on International Law. In order to associate the Seminar with the tributes paid to the memory of Mr. Milan Bartoš, who had participated as a lecturer in all its sessions, the tenth session would be called the Milan Bartoš session.

3. He thanked those members of the Commission who, at the twenty-eighth session of the General Assembly, had made complimentary references to the organizers of the Seminar. On the present occasion there would be 24 participants, 13 of whom had received fellowships. Seven Governments granted fellowships ranging from 3,600 to 12,000 Swiss francs and having a total value of about 50,000 Swiss francs, which enabled nationals of developing countries to participate in the Seminar. Unfortunately, owing to the fall in the value of the dollar, the increased cost of living in Switzerland and the high cost of air travel, that sum had become insufficient, and the Secretariat had been forced to reduce by two the number of participants in the current session. He therefore appealed to other Governments to grant fellowships.

4. Another problem affecting the Seminar was that of interpretation. The International Law Commission and the Seminar were entitled to only one team of interpreters. The Seminar did not usually meet at the same time as the Commission, but there might be difficulties when the Drafting Committee had to hold two meetings on the same day. Of course, the Commission and its Drafting Committee had priority, but it should not be forgotten that the Seminar was held at the request of the General Assembly, that it received financial support from a number of Governments and that most of the participants came from distant countries. It would therefore be helpful if, on days when the Seminar had to meet at the same time as the Drafting Committee, the latter could start an hour later—say, at 4 p.m. instead of 3 p.m.—so that at least the lecture opening the Seminar meeting could be interpreted.

Succession of States in respect of treaties

(A/CN.4/275 and Add.1 and 2; A/CN.4/278 and Add.1 and 2; A/8710/Rev.1)

[Item 4 of the agenda]

Introduction by the Special Rapporteur

5. The CHAIRMAN invited the Special Rapporteur to introduce his first report on succession of States in respect of treaties (A/CN.4/278 and addenda).

6. Sir Francis VALLAT (Special Rapporteur) said that his report only took account of the comments received from Governments by 1 March 1974 (A/CN.4/275), since for obvious practical reasons a deadline had had to be set. Comments had been received after that date from the Governments of the Netherlands (A/CN.4/275/Add.1) and Kenya (A/CN.4/275/Add.2) and he would take them fully into account in his oral introductions. He would not need to refer at that stage to the comments of Kenya, but would have to refer to those of the Netherlands because they related to matters discussed in the introductory part of his report. With regard to the discussions in the Sixth Committee of the General Assembly, he had, in general, considered it unnecessary, in that part of his report, to make specific reference to the views expressed by individual delegations, and had analysed them on the basis of the reports of the Sixth Committee at the General Assembly's twenty-seventh and twenty-eighth sessions.[1]

7. The basis of his own work and that of the Commission on the present topic was chapter II of the Commission's 1972 report, on the work of its twenty-fourth session (A/8710/Rev.1).[2] He had, of course, also relied on the reports of the former Special Rapporteur, especially his third,[3] fourth,[4] and fifth[5] reports, and on the records of the discussions at the Commission's twenty-fourth session.[6] In addition, the 1969 Vienna Convention on the Law of Treaties[7] had to be kept in mind at all stages of the Commission's work on the present topic. Lastly, he had made good use of the valuable documents prepared by the Secretariat under the title "Materials on Succession of States".[8]

8. The main working documents before the Commission would thus be the draft articles and commentaries, as set out in the Commission's 1972 report, and his own report, consisting of an introduction, observations on the draft articles as a whole in the light of government comments and observations on specific provisions of the draft articles; those on articles 1 to 12 had already been issued and the remainder would follow in subsequent addenda.

9. His primary objective in drafting his report had been to ensure that the second reading of the draft articles could be completed at the present session. He had accordingly endeavoured to present government comments in a manageable form, to focus attention on the points raised and to make suggestions that might help the Commission to reach final decisions quickly. He wished to stress that not all his suggestions were intended for adoption; in some cases, they were put forward simply in order to help the Commission to take a decision one way or the other on a particular point.

10. That being said, he wished to sound a note of warning: the Commission should not be lulled into a false sense of security if it happened to make rapid progress on the early articles; some of the later ones involved difficult problems. And the Commission might also have to consider the introduction of new articles in addition to those adopted on first reading. Moreover, he proposed to submit a further chapter on the problem of procedures for the settlement of disputes concerning the interpretation and application of a convention based on the draft articles. That was an important question, which would call for thorough discussion by the Commission.

11. It would perhaps be desirable for the Commission to begin with a short general debate so that its work could proceed on the basis of a common understanding on certain points. In chapter II of his report he had submitted observations on a number of matters which related to the Commission's general approach to the topic and which had been raised by Governments in their oral or written comments. He was not inviting discussion of all the points mentioned in that chapter, but only of those on which he thought the Commission should take a stand in order to avoid having to revert to them later when it came to discuss specific articles.

12. In the first place, he believed that the importance of the draft articles should be neither exaggerated nor underestimated; that was particularly true of the articles designed for the future. The Commission had been

[1] A/8892 and A/9334.

[2] Reproduced in *Yearbook ... 1972*, vol. II.

[3] *Yearbook ... 1970*, vol. II, pp. 25-60.

[4] *Yearbook ... 1971*, vol. II, Part One, pp. 143-156.

[5] *Yearbook ... 1972*, vol. II, pp. 1-59.

[6] *Yearbook ... 1972*, vol. I.

[7] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations Publication, Sales No. E.70.V.5) p. 289.

[8] ST/LEG/SER.B/14 and A/CN.4/263.

critized for the length of part III (articles 11 to 25) of the draft articles, dealing with newly independent States, and the view had been expressed that it was perhaps excessive to devote fifteen articles to a problem that was of diminishing or even vanishing importance. He did not believe that that criticism was valid. The international community was small, consisting as it did of some 150 States, but the number of individuals affected was very large. Even if a satisfactory solution could be found for only one case, an important task would have been performed in international relations. That remark was especially applicable to the case of newly independent States; the process of decolonization was unfortunately not yet complete, so that the articles relating to those States were of great material importance. Moreover, if the Commission decided to adhere to the solutions adopted in articles 11 to 25 of the 1972 draft, those provisions would be pertinent to the problem of a new State formed by separation of part of a State (article 28).

13. In its comments, the Swedish Government had criticized the so-called "clean slate" doctrine whereby a newly independent State was not bound to maintain in force, or to become party to, any treaty by reason only of the fact that, at the date of the succession of States, the treaty was in force in respect of the territory to which the succession of States related; that Government had suggested that the Commission should prepare an alternative set of draft articles based on the opposite assumption, namely, that "the new State inherits the treaties of the predecessor", subject to some possible exceptions and to a limited right of denunciation. Although that was an interesting suggestion, quite apart from any other considerations, the Commission would not have time to prepare an alternative text for draft articles 11 to 25. His own recommendation on that point was that the Commission should not adopt any such approach, which would in any case run counter to the wishes of the large majority of Member States (A/CN.4/278, para. 15).

14. It was important to stress at the very outset of the Commission's work that the concept of State succession was the keystone of the whole draft. At the twenty-seventh session of the General Assembly, the Sixth Committee had endorsed the Commission's view that analogies drawn from municipal law should be avoided and that, for the purpose of the draft articles, the expression "succession of States" should denote simply the fact of the replacement of one State by another, thus excluding all questions of rights and obligations as a legal incident of that change.[9]

15. With regard to the relationship between the present topic and the general law of treaties, it was clear that the provisions of the Vienna Convention on the Law of Treaties should be taken as the essential framework for the law relating to succession of States in respect of treaties. Because of the nature of State succession, however, there were points on which it was necessary to depart from the solutions adopted in that Convention. A case in point was the right, set forth in draft article 15, paragraph 2, of a newly independent State to formulate new reservations on notifying its succession to a multilateral treaty. That right was not provided for in the Vienna Convention and, in a sense, might even be considered as contrary to the terms of that Convention. A more flexible approach was necessary in the present draft articles, however, because of the particular requirements of their subject-matter.

16. He did not believe that there was any need for further discussion of the clean slate doctrine. The Commission had endorsed that doctrine, but in doing so had not ignored the essential continuity of multilateral treaty provisions. In that connexion, he drew attention to the provisions of article 12 (Participation in treaties in force) and article 13 (Participation in treaties not yet in force), which established machinery for ensuring such continuity. He would be tempted to say that while the "clean slate" metaphor was appropriate in relation to the provisions of article 11 (Position in respect of the predecessor State's treaties), the following two articles embodied a "magic cloth" formula, which made it possible to revise essential treaty links.

17. As to the form of the draft, there was clearly only one possible course open to the Commission, namely, to frame it so that it could serve as a basis for a convention. In that connexion, the Danish Government, in its written comments, had suggested that an optional clause on retroactivity relative to new States should be inserted in the prospective convention. That suggestion would raise considerable problems, as he had pointed out in paragraph 40 of his report. At a later stage, he would consider whether the draft should contain an article providing for retroactive effect of the prospective convention where a newly independent State became a party to it after the date of succession. He would welcome the views of members on that idea and especially on the last sentence of paragraph 41 of his report.

18. With regard to the scope of the draft, the interesting suggestion had been made by the Netherlands delegation in the Sixth Committee that the draft should be extended to cover cases of hybrid unions such as Customs unions, and he had dwelt at some length on that proposal in his report (paras. 44 to 48). It was true that in some cases international organizations could be given a measure of treaty-making capacity by their member States, but that question was outside the topic of State succession in the sense of the replacement of one State by another. He noted, moreover, that in its written comments, the Netherlands Government had not reverted to the matter, and it could be assumed that it need not be taken any further. It was desirable, however, that the Commission should reach a clear understanding on that point at the present state.

19. On the question of categories of succession of States, the difficult problem of revolutions had been mentioned by a number of Governments and he had discussed the matter in chapter II, section H of his report. It was his impression that any attempt to deal with that problem would immensely complicate the Commission's work. There were many different kinds of

[9] *Official Records of the General Assembly, Twenty-seventh Session, Annexes*, agenda item 85, document A/8892, para. 35.

revolution and any effort to distinguish between them would meet with serious difficulties. His own view, which was probably shared by the majority of members, was that the problem should be regarded as one of succession of governments rather than succession of States.

20. With regard to categories of treaties and the distinction between "restricted" and "general" multilateral treaties, he suggested that it would be desirable to postpone consideration of the matter until a later stage, for example, when article 12 was under discussion.

21. His report contained a section on the problem of recognition, which was a subject of considerable intrinsic interest. His own view was that the Commission should follow its consistent practice of not dealing with that problem piecemeal in any of its drafts. He hoped that it would endorse his recommendation that it should not embark on particular aspects of that problem, but state in its report that it had decided to leave them for future consideration in an appropriate context.

22. With regard to the interrelation between the present draft articles and the draft articles on succession of States in respect of matters other than treaties, dealt with in chapter II, section J of his report, he thought that the parallelism of the two topics should be borne constantly in mind, but that the Commission should not allow it to distort its view on any particular article. Work on the topic of State succession in respect of matters other than treaties had not been carried far enough to indicate any impact on specific articles.

23. Lastly, the Commission should always bear in mind that both the written comments of governments and the discussion in the Sixth Committee had reflected a very general approval of the provisions contained in the draft articles, an approval which he found most encouraging in his work as Special Rapporteur.

24. He urged members to comment on the various points to which he had referred, so that the Commission could move on quickly to the consideration of specific draft articles, with every prospect of fulfilling the General Assembly's wish that the second reading should be completed at the present session.

General debate

25. The CHAIRMAN thanked the Special Rapporteur for his lucid introduction and suggested that the Commission should proceed to a general debate. In the interests of brevity, he suggested that members should confine their remarks to points on which they were in disagreement with the Special Rapporteur's conclusions.

26. Mr. TSURUOKA said he wholeheartedly supported that procedural suggestion. He himself need only say that he fully agreed with the Special Rapporteur's views on the various general points he had mentioned.

27. Mr. TAMMES said that he had no objections to make, but only a reservation about the Special Rapporteur's conclusion that it would be appropriate to prepare the draft articles in a form suitable for incorporation in a convention. He endorsed that conclusion and the reasons given for it, but there remained the paradox, which Governments had mentioned in their comments, of a convention starting with the clean slate rule in favour of newly independent States and ending by considering itself *ipso jure* applicable to new States. If the convention was not so applicable, it would not be effective. The Special Rapporteur considered that problem to be theoretical, at least from the point of view of deciding whether to have a convention or a code, but the paradox had some very practical implications. After much discussion, the Commission had concluded that newly independent States and those created by separation or secession should be given a clean slate, but not States resulting from union or dissolution. *Ipso jure* continuity of treaty obligations in the latter cases represented a new rule hardly supported by practice. New States in that category, from the time of their creation, would automatically, and perhaps against their will, be bound by the treaty obligations previously in force in their territory, until a denunciation clause, if any, came into effect. Meanwhile, the practical consequences might be considerable in such matters as extradition and air transport. The only other means of escape for a new State would be to withdraw from the succession convention as soon as possible with retroactive effect. It might have that option if the Danish Government's suggestions were adopted, though the Commission had not intended to provide for such an option to terminate.

28. The problem had not been satisfactorily solved in the introduction to the draft in the Commission's 1972 report, paragraph 41 of which stated that the future convention would establish a rule "as the accepted customary law on the matter". That was too much like begging the question. A better solution might be a clear statement by the Commission that it considered the convention as being in a special category among multilateral treaties. The Special Rapporteur had referred to that possibility, but was not in favour of complicating the simple distinction made in the Vienna Convention between bilateral and multilateral treaties. The proposed convention, however, had a "temporal" dimension, which could not play a dominant role in the Vienna Convention. It would therefore be more satisfactory if the Commission, in addition to its reference to custom in paragraph 41 of its 1972 report, were to state in some form, for confirmation by the General Assembly and the diplomatic conference adopting the proposed convention, that that instrument would fall into the category of multilateral treaties "the object and purpose of which are of interest to the international community as a whole"—the wording used in the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties.[10] If certain conventions could be qualified by the General Assembly or a future diplomatic conference as being subject to a régime of world-wide applicability and continuity—applicability *erga omnes* in space and time—the Netherlands Government, as it had stated in its written observations, would consider that a step towards reconciliation in the clean slate *versus* con-

[10] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 285.

tinuity controversy. He would revert to the subject when article 11 was discussed. For the time being, the Commission might consider the *erga omnes* status of the proposed convention separately from the question of presumption of continuity.

29. Mr. TABIBI said that the topic of succession of States in respect of treaties was an extremely complex one and it was essential to point out that the régimes applicable were of a very pragmatic character. It was not uncommon for one and the same country to adopt different standpoints, and even diametrically opposed views, on the same issue in relation to different individual cases. The conclusion to be drawn from that fact was that there were no rules on State succession in respect of treaties which were equally applicable in all cases.

30. That applied particularly to the Vienna Convention on the Law of Treaties, which had been taken as the framework for the present draft. As the Special Rapporteur himself had recognized, in many instances it was necessary to depart from the solutions adopted in the Vienna Convention in order to take the special requirements of the present topic into account. To give just one example, the law of treaties regarded a treaty as being negotiated and finalized by the parties to it. In matters of State succession, however, the situation was much more complex; it was necessary to consider, first, the predecessor State, secondly, the successor State and, thirdly, the third party or parties involved. A third party in that situation, however, was not an outsider, but a contracting party to the original treaty.

31. He also wished to stress an important general point relating to government comments. Only a small number of States had submitted written comments, and nearly all of them were European States. Few, if any comments on the substance of the articles had been received from Asian or African countries. It was simply not realistic to expect those countries to submit comments so soon. In many cases, it was necessary to translate the text of the draft articles into the national language. Moreover, the articles dealt with complex and delicate questions, which required careful consideration before a final position could be taken. In the circumstances, he suggested that a letter of reminder should be sent by the Secretariat to those Governments which had not yet submitted comments.

32. For the same reasons, special importance should be attached to the oral statements made in the Sixth Committee of the General Assembly. It was not sufficient to rely on the Sixth Committee's reports, to which the Special Rapporteur had referred in his introductory statement; the form in which those reports were drafted made them unsuitable for the purpose of ascertaining the views of individual delegations. It was necessary at least to consult the summary records of the discussions, although even those records did not always suffice because, in the interests of economy, they were made too brief. In that connexion, he drew attention to the announcement made by the Commission's outgoing Chairman at the opening meeting of the present session, that he had circulated to all members the full text of his own statement to the Sixth Committee so as to give a more complete picture of that Committee's debate on the work of the Commission.[11] It was significant that in the ensuing discussion, the Special Rapporteur on State responsibility—the main topic dealt with in the Commission's 1973 report—had stressed that it would be useful to be able to read the verbatim text of the statements made in the Sixth Committee.[12]

33. The Commission was fortunate in that its Special Rapporteur brought to the study of the difficult topic of succession of States in respect of treaties a wealth of practical experience; as legal adviser to the ministry of foreign affairs of a great country, he had dealt with many cases of State succession. That special knowledge of State practice would, he trusted, ensure that the various situations contemplated in the draft articles were examined in the light of contemporary realities. In considering each article, the Commission would have to pay due regard to the reactions of delegations in the General Assembly and to the views, policies and interests of States.

34. He fully agreed with the Special Rapporteur on the need for the Commission to bear in mind that it was making decisions which would affect not merely 150 States, but thousands of millions of human beings. Modern international law attached the greatest importance to the rights of peoples, and the Charter of the United Nations repeatedly stressed the principle of self-determination. Where treaties were concerned, it was the wishes and rights of peoples that should prevail, not nineteenth-century doctrines inherited from the colonial era.

35. Sir Francis VALLAT (Special Rapporteur) said he could assure Mr. Tabibi that for the oral comments made by delegations during the Sixth Committee's discussions, he had not relied solely on that Committee's reports. As could be seen from his commentaries to the individual articles, he had made full use of the summary records of the proceedings, which he had quoted at length wherever appropriate.

36. Mr. USHAKOV congratulated the Special Rapporteur on his report and his excellent introductory statement. By and large, he shared his views on the general approach to be adopted to the draft articles.

37. The suggestion by Mr. Tammes that so-called universal treaties, that was to say, those applicable *erga omnes*, should be distinguished from other treaties was very attractive. The Special Rapporteur should consider it, bearing in mind two cases: first, that in which a dependent territory had become bound by a universal treaty through the administering Power before it had attained independence; and secondly, that in which it had not become bound by such a treaty. In the latter case the treaty could not become binding on the new State by the operation of the rules of succession.

38. Mr. CALLE Y CALLE expressed his full approval of the Special Rapporteur's report and comments.

39. The CHAIRMAN, speaking as a member of the Commission, also endorsed the Special Rapporteur's

[11] See 1250th meeting, para. 12.

[12] *Ibid.*, para. 22.

approach and his balanced presentation of the comments of Governments, which would provide an excellent basis for the Commission's work. In his introductory remarks, the Special Rapporteur had mentioned the possibility of dealing with the question of the settlement of disputes, but in view of the number of draft articles the Commission had to consider, he doubted whether it would have time to take up what was in fact a separate and quite substantial subject, which at present was touched upon only in Article 33 of the United Nations Charter.

40. Mr. MARTÍNEZ MORENO said he shared Mr. Ustor's views on the question of the settlement of disputes. The experience of Latin American countries had shown that it presented many difficulties, in spite of a very comprehensive inter-American agreement on the subject. The Commission should at present confine itself to the second reading of the articles it had already adopted.

41. Sir FRANCIS VALLAT (Special Rapporteur) said he had no intention of trying to persuade the Commission to adopt articles on the settlement of disputes, which would involve a considerable amount of work; but some Governments had raised the question, which in fact had a bearing on some of the draft articles before the Commission. He would discuss it in an addendum to his report, and the Commission should perhaps mention it in its report to the General Assembly. It would be desirable to devote at least one meeting to discussion of the subject.

42. He agreed with Mr. Tammes that the status of conventions establishing a general law which should continue to apply *erga omnes* was a very real problem. Before commenting on it, he wished to consult other members of the Commission to see if it was possible to draft a generally acceptable provision for inclusion in the draft articles.

43. The CHAIRMAN said that the general debate was concluded. He invited the Commission to begin its second reading of the draft articles on succession of States in respect of treaties.

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 1

Article 1

Scope of the present articles

The present articles apply to the effects of succession of States in respect of treaties between States.

44. Sir Francis VALLAT (Special Rapporteur) said he thought that article 1 could be referred to the Drafting Committee. In paragraphs 96 and 97 of his report he had drawn attention to a drafting change suggested by the Government of Pakistan. The absence of comments on the question of hybrid unions suggested that it could be dealt with by mentioning the views of Governments in the Commission's report and that it would not be necessary to include a provision on that question in the draft articles.

45. The CHAIRMAN, speaking as a member of the Commission, expressed his approval of article 1 as drafted, and his agreement with the Special Rapporteur regarding hybrid unions. Participation in hybrid unions did not affect the treaty obligations of a State and all such unions were based on that premise. He suggested that article 1 should be provisionally approved and referred to the Drafting Committee for further consideration.

It was so agreed.[13]

ARTICLE 2 (Use of terms)

46. Mr. ELIAS suggested that the consideration of definitions should take place at a later stage.

47. Mr. KEARNEY said it might be unwise to postpone consideration of the definitions until the end, as some of them would affect the wording of articles, which might then have to be reconsidered.

48. Sir Francis VALLAT (Special Rapporteur) said that the definitions would ultimately have to be made to accord with the substantive decisions on the articles themselves, which might in any case have to be revised subsequently. The definitions would then be useful for any redrafting. The Commission could therefore proceed provisionally on the basis of the existing definitions; any comments and suggestions made on them during the consideration of the articles would facilitate preparation of the final version of article 2.

49. The CHAIRMAN agreed that it was customary for the discussion of definitions to be deferred until the last stage of the work, and suggested that article 2 should be provisionally adopted and referred to the Drafting Committee.

It was so agreed.[14]

The meeting rose at 12.50 p.m.

[13] For resumption of the discussion see 1285th meeting, para. 3.

[14] For resumption of the discussion see 1296th meeting; para. 46.

1265th MEETING

Monday, 27 May 1974, at 3.15 p.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Šahović, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Commemoration of the twenty-fifth anniversary of the opening of the first session

[Item 2 of the agenda]

1. The CHAIRMAN declared open the 1265th meeting of the Commission, held to commemorate the twenty-