

Document:-  
**A/CN.4/SR.1541**

**Summary record of the 1541st meeting**

Topic:  
**Filling of casual vacancies**

Extract from the Yearbook of the International Law Commission:-  
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33. Again, a distinction had to be drawn between consent and waiver. The commentary should point out that consent given after the commission of the act in effect constituted a waiver. Consent would preclude the wrongfulness of the act, whereas waiver would simply constitute a mitigating circumstance.

34. He supported the proposals made by Mr. Quentin-Baxter earlier in the meeting and by Mr. Tsuruoka (A/CN.4/L.291), but the Drafting Committee might wish to consider the advisability of retaining the phrase "if it is established", employed by Mr. Tsuruoka. Such a form of words, if used in article 29, would have to be used in every article dealing with exceptions and would become an evidentiary rule rather than a substantive norm.

*The meeting rose at 6.10 p.m.*

## 1541st MEETING

*Tuesday, 29 May 1979, at 11.45 a.m.*

*Chairman:* Mr. Milan ŠAHOVIĆ

*Members present:* Mr. Bedjaoui, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

### Filling of casual vacancies of the Commission (article 11 of the Statute) (A/CN.4/317 and Add.1 and Add.1/Corr.1 and Add.2)

[Item 1 of the agenda]

1. The CHAIRMAN announced that, at a private meeting, the Commission had elected Mr. Jens Evensen, of Norway, Mr. Boutros Ghali, of Egypt, and Mr. Julio Barboza, of Argentina, to fill the vacancies caused by the election, on 31 October 1978, of Mr. Roberto Ago, Mr. Abdullah El-Erian and Mr. José Sette Câmara as judges of the International Court of Justice.

2. Telegrams would be sent immediately to the three new members of the Commission inviting them to take part in its work.

*The meeting rose at 11.50 a.m.*

## 1542nd MEETING

*Wednesday, 30 May 1979, at 10.10 a.m.*

*Chairman:* Mr. Milan ŠAHOVIĆ

*Members present:* Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr.

Quentin-Baxter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

*Also present:* Mr. Ago.

### State responsibility (*continued*)\* (A/CN.4/318 and Add.1-3, A/CN.4/L.291, A/CN.4/L.292)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY MR. AGO (*continued*)

#### ARTICLE 29 (Consent of the injured State)<sup>1</sup> (*continued*)

1. Mr. PINTO said that the question had been raised of the appropriateness of the term "injured State", which appeared in the title of draft article 29. For his part, he had no difficulty with that term, since, in his view, it was used in its factual, as opposed to its legal, sense to refer to a State that had been injured in fact but might not be held to have been injured in law. So far as the term "consent" was concerned, however, he continued to think that it required some qualification to make it clear that consent must be explicit and freely and lawfully given. He was prepared to accept the addition of the word "valid", provided that it was understood to cover those elements; if not, then some other wording should be found.

2. He agreed that the draft article in its present form should be restrictively interpreted and also that the order of its two provisions should be reversed, so that the exception preceded the general rule.

3. In respect of draft article 29, he had already raised a question (1538th meeting) concerning the relationship between the concepts of wrongfulness and responsibility. In that regard, he would be grateful for clarification on three points, the first of which concerned the connexion between the wrongful act and the consequences, or effects, of the wrongfulness. If consent to a wrongful act was given in accordance with the terms of article 29, should such consent, and therefore responsibility, be deemed to apply to all the consequences that flowed from the act in question, or only to such consequences as could reasonably be foreseen by the State which would otherwise have been injured? Assuming for example that State A installed a nuclear plant on the territory of State B on the specific understanding that there would be no disposal of radioactive waste on the latter's territory, and assuming that an official of State B subsequently authorized such disposal and that damage was caused thereby, it might be held that there was valid consent to the extent that the official concerned was competent in the matter, but the question remained whether, in the circumstances of the case, such consent should

\* Resumed from the 1540th meeting.

<sup>1</sup> For text, see 1537th meeting, para. 25.