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**A/CN.4/SR.1583**

**Summary record of the 1583rd meeting**

Topic:  
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Extract from the Yearbook of the International Law Commission:-  
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to the power of direction or control of the federal State". In his view, there was no subordination in the organization of a federal State.

*It was so decided.*

*Paragraph (18), as amended, was approved.*

Paragraphs (19)-(37)

*Paragraphs (19)-(37) were approved.*

*The commentary to article 28, as amended, was approved.*

*Commentary to the introduction to chapter V (Circumstances precluding wrongfulness) (A/CN.4/L.303/Add.2)*

*The commentary to the introduction to chapter V was approved.*

*Commentary to article 29 (Consent) (A/CN.4/L.303/Add.3)*

*The commentary to article 29 was approved.*

*Commentary to article 30 (Countermeasures in respect of an internationally wrongful act) (A/CN.4/L.303/Add.4)*

*The commentary to article 30 was approved.*

*Commentary to article 32 (Distress) (A/CN.4/L.303/Add.6)*

Paragraph (1)

*Paragraph (1) was approved.*

Paragraphs (2)-(13)

11. Mr. TSURUOKA observed that paragraph (2) contained a reference to draft article 31. He reminded members that he had already drawn attention to some confusion in the various uses of the words "conduct" and "act". He recommended that the Commission remain vigilant on that point, for although homogeneity seemed to prevail from article 3 to article 19, the same did not apply to articles 20, 21 and 31. It might perhaps be desirable to explain the use of those terms clearly in the commentary so as to ensure some degree of concordance in the text as a whole.

12. Mr. AGO explained that paragraph (2) of the commentary referred to article 31 solely in order to point out that, in a situation of *force majeure* or fortuitous event, the conduct of the State was involuntary, whereas an element of will certainly existed in the situation of distress.

*Paragraphs (2)-(13) were approved.*

Paragraph (14)

13. Replying to a question put by Mr. RIPHAGEN, Mr. AGO explained that, in the commentary to article 31, to which reference was made in paragraph (14) of the commentary to article 32, mention was made of the need to insert in chapter V of the draft a clause stating that preclusion of the wrongfulness of an act of a State by reason of the circumstances of its commission did not affect the possible responsibility of the State on grounds other than the act, whose wrongfulness was precluded by the provisions of the draft articles.

14. Mr. USHAKOV thought the Commission should resume consideration of article 32 when it examined the draft provisions on state of emergency, because it was distress of the State that gave rise to emergency.

He noted that there was a tendency to introduce two separate concepts of distress, that of the State organ and that of the State itself, and that such a dichotomy might cause difficulties.

15. Mr. AGO pointed out that he had already inserted some comments along those lines in the relevant chapter, and that he intended to go into the two types of situation in the commentary in due course.

*Paragraph (14) was approved.*

*The commentary to article 32 was approved.*

**CHAPTER VIII. Review of the multilateral treaty-making process (A/CN.4/L.308)**

*Chapter VIII was adopted.*

*The meeting rose at 12.50 p.m.*

## 1583rd MEETING

*Friday, 3 August 1979, at 10 a.m.*

*Chairman: Mr. Milan ŠAHOVIĆ*

*Members present: Mr. Dadzie, Mr. Diaz González, Mr. Pinto, Mr. Riphagen, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.*

*Also present: Mr. Ago.*

### **Draft report of the Commission on the work of its thirty-first session (concluded)**

**CHAPTER II. Succession of States in respect of matters other than treaties (concluded) (A/CN.4/L.302 and Add.1-4)**

**B. Draft articles on succession of States in respect of matters other than treaties (concluded) (A/CN.4/L.302/Add.1-3)**

**PART III (STATE DEBTS) (concluded)**

*Commentary to article 22 (Separation of part or parts of the territory of a State) and article 23 (Dissolution of a State) (concluded)*

Paragraphs (23) and (26) (concluded)

1. The CHAIRMAN reminded members that at the previous meeting Mr. Riphagen and Mr. Verosta had been requested to find adequate wording for the passages of paragraphs (23) and (26) relating to the Netherlands and Belgium.

2. Those two members of the Commission proposed that the words "the case of the dissolution of the Belgian-Dutch State where the two successor States refused", appearing in the fifth sentence of paragraph (23), should be replaced by the words "the already quoted case of 1830/1839, where the Nether-

lands and Belgium refused", and that the words "especially in the case of the break-up of the Kingdom of the Netherlands", in the second sentence of paragraph (26), should be deleted.

3. If there were no objections, he would take it that the Commission accepted those amendments.

*Paragraphs (23) and (26), as amended, were approved.*

*The commentary to articles 22 and 23, as amended, was approved.*

*Commentary to article 20 (Newly independent State) (concluded)*

Paragraph (59)

4. The CHAIRMAN, referring to the foot-note to paragraph (59), which referred to paragraphs (25)–(27) of the commentary to article 11 (A/CN.4/L. 302/Add.2), explained that those paragraphs reproduced the substance of two paragraphs of the commentary to article 20 adopted in 1977; they had therefore not been reproduced in paragraph (59).

Paragraph (64)

5. The CHAIRMAN drew the attention of the members of the Commission to paragraph (64), which read:

When adopting article 20 at first reading, one member of the Commission was unable to support its text and expressed reservations.

The views of that member and those of other members had been fully described in the commentary approved in 1977.<sup>1</sup>

6. Since one member of the Commission who had not approved the text of article 20 and who had expressed reservations thereon had been unable to participate in the meetings of the current session at which that article had been examined, the Commission might wish to replace paragraph (64) of the commentary to article 20 by paragraphs (68) and (69) of the commentary to the corresponding article reproduced in its report on the work of its twenty-ninth session (1977), in order to record fully the positions taken on the article.

7. After an exchange of views in which Mr. USHAKOV, Mr. YANKOV, Mr. VEROSTA and Mr. DÍAZ GONZÁLEZ took part, the CHAIRMAN suggested that the Secretariat be authorized to contact the persons concerned with a view to recording in paragraph (64), if that were desired, the views expressed in 1977, as reflected in paragraphs (68) and (69) of the commentary to the corresponding article adopted in 1977.

*It was so decided.*

*Subject to that reservation, paragraph (64) was approved.*

*The commentary to article 20, as amended, was approved.*

*Part III, as amended, was adopted.*

*Section B, as amended, was adopted.*

*Chapter II, as amended, was adopted.*

CHAPTER III. *State responsibility (concluded)* (A/CN.4/L.303 and Add.1–6)

B. *Draft articles on State responsibility (concluded)* (A/CN.4/L.303 and Add.1–6)

2. TEXT OF ARTICLES 28–32, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTY-FIRST SESSION (*concluded*) (A/CN.4/L.303/Add.1–6)

*Commentary to article 31 (Force majeure and fortuitous event)* (A/CN.4/L.303/Add.5)

Paragraphs (1)–(38)

*Paragraphs (1)–(38) were approved.*

Paragraph (39)

8. Following comments by Mr. RIPHAGEN and Mr. VEROSTA, Mr. AGO proposed that the last sentence of paragraph (39) should be amended to read: "In the opinion of the Commission, a thorough study of such obligations could be made within the framework either of part II of the report on State responsibility for wrongful acts or of the report on liability arising out of acts not prohibited by international law."

*It was so decided.*

*Paragraph (39), as amended, was approved.*

Paragraph (40)

9. Mr. USHAKOV, referring to the fifth sentence of paragraph (40), proposed that the words "adopt conduct in conformity" should be replaced by the words "act in conformity", which corresponded to the wording of article 31, paragraph 1, and had the merit of not containing the word "conduct".

*It was so decided.*

*Paragraph (40), as amended, was approved.*

Paragraph (41)

*Paragraph (41) was approved.*

Paragraph (42)

10. Mr. TSURUOKA said that at the second reading the Commission would have to re-examine carefully the use of the words "conduct" and "act". In particular, the expression "the State committing the act", which occurred in the first sentence of paragraph (42), was unsatisfactory.

11. Mr. AGO suggested that that expression be replaced by the words "the State having committed the act".

*It was so decided.*

12. Mr. RIPHAGEN stressed the need to reserve the situation of an injured State which took countermeasures.

<sup>1</sup> See *Yearbook... 1977*, vol. II (Part Two), p. 94, document A/32/10, chap. III, sect. B.2, article 22, paras. (68) and (69) of the commentary

*Paragraph (42), as amended, was approved.*

*The commentary to article 31, as amended, was approved.*

*Subsection 2, as amended, was adopted.*

*Section B, as amended, was adopted*

*Chapter III, as amended, was adopted.*

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

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

#### **Closure of the session**

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

*The meeting rose at 11.45 a.m.*

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