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Summary record of the 1680th meeting

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Article 39. General rule regarding the amendment of treaties

1. A treaty may be amended by the conclusion of an agreement between the parties. The rules laid down in Part II apply to such an agreement.

2. The consent of an international organization to an agreement provided for in paragraph 1 shall be governed by the relevant rules of that organization.

Article 40. Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States and organizations or, as the case may be, to all the contracting organizations, each one of which shall have the right to take part in:

(a) the decision as to the action to be taken in regard to such proposal;

(b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State or international organization entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such a party.

5. Any State or international organization which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State or organization:

(a) be considered as a party to the treaty as amended; and

(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 41. Agreements to modify multilateral treaties between certain of the parties only

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(a) the possibility of such a modification is provided for by the treaty; or

(b) the modification in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) does not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless, in a case falling under paragraph 1 (a), the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

46. Mr. REUTER (Special Rapporteur) said that no comments had been made on articles 39 to 41.

47. As a result of the introduction of the term “the contracting entities” into the language of the draft articles, the first part of paragraph 2 of article 40 could be simplified; the words “to all the contracting States and organizations or, as the case may be, to all the

contracting organizations” could be replaced by “to all the contracting entities”.

48. The CHAIRMAN said that, in the absence of any comment, he would take it that the Commission wished to refer articles 39 to 41 to the Drafting Committee.

It was so decided.

The meeting rose at 12.30 p.m.

1680th MEETING

Monday, 29 June 1981, at 3.20 p.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Ushakov, Sir Francis Vallat, Mr. Yankov.

Tribute to Mr. Pierre Raton

1. The CHAIRMAN recalled that at the opening meeting of the current session the Acting Chairman of the Commission had indicated that Mr. Pierre Raton, Chief of the Legal Liaison Office at the United Nations Office at Geneva, was about to retire. On 30 June 1981, Mr. Raton would end a career of more than thirty years with the United Nations Secretariat. During that long and brilliant career, first with the Legal Service in New York, then with the Directors-General in Geneva, he had rendered invaluable service and given precious advice.

2. Mr. Raton's departure was a loss not only for the Secretariat, which would be deprived of a devoted jurist, but also for the Commission, which would lose a friend and advocate of the codification and progressive development of international law. At the beginning of his career as a jurist, Mr. Raton had attended the Commission's second session, held at Geneva in 1950. Since then, he had taken part in the Commission's work in various capacities. Of all those present at the current meeting, he was certainly the one who had attended the greatest number of sessions and taken part in the preparation and publication of the largest number of Commission documents. His most remarkable contribution was no doubt the creation of the International Law Seminar. After having set it up almost singlehandedly in 1965, he had continued to organize it with so much care, devotion and success that the Seminar had become intimately connected with the sessions of the Commission.

3. On behalf of the members of the Commission, past and present, he wished to express to Mr. Raton the

Commission's deep gratitude for everything it owed him.

4. Mr. JAGOTA said that, in subscribing to the tribute voiced by the Chairman, he wished to add a personal note of thanks to Mr. Raton for the recent gift of Mr. Raton's book on Liechtenstein. The gift had been all the more appreciated as the book had shown Mr. Raton to be as competent an authority on mini-States as he had been a servant of the Commission and the United Nations.

5. Mr. DÍAZ GONZÁLEZ said that Mr. Raton had truly been a man of the Commission. Of Mr. Raton's many achievements, he wished to single out the creation of the International Law Seminar, which, by the guidance it had provided for young lawyers and civil servants, had been of particular benefit to small States. That Mr. Raton should be especially warmly remembered by the smaller nations was doubly fitting for one who, as Mr. Jagota had remarked, had an extra-professional interest in their development.

6. Mr. ŠAHOVIĆ said that he had had an opportunity to follow Mr. Raton's activities in all the areas in which he had worked, whether as the collaborator of a former member of the Commission, Mr. Bartoš, in the Sixth Committee of the General Assembly, or in the International Law Commission. The Commission's success was no doubt largely due to the work of Mr. Raton, who had always looked after the Commission's interests within the United Nations system. Similarly, he had always defended the interests of the members of the Commission and had helped them settle a good many practical matters in Geneva. Indeed, the success of the Commission's work depended above all on the solution of practical problems.

7. Not only was Mr. Raton the author of a book on Liechtenstein, but for decades he had regularly analysed the work of the Sixth Committee and the International Law Commission in the *Annuaire français de droit international*. As a member of the Commission, he himself had often referred to those critical studies of the Commission's work.

8. As for Mr. Raton's contribution to the organization of the International Law Seminar, it should be emphasized that his work had been recognized and appreciated for its true value countless times outside the Commission and, in particular, in the Sixth Committee.

9. Mr. USHAKOV associated himself with the praise of Mr. Raton and expressed to him best wishes, particularly for the technical activities which he would no doubt be sure to carry out and from which the Commission would be able to benefit. He expressed the hope that ties of friendship would continue to link Mr. Raton to the members of the Commission.

10. Mr. REUTER paid a tribute to Mr. Raton's qualities of efficiency and discretion. There had been two sides to that great international civil servant's

career: a visible side, marked by the brilliant service he had rendered to the Commission, and a hidden side, made up of patience and painstaking daily work. No matter what kind of hospitality a State offered, countless material difficulties always arose and they could be overcome only by dint of unfailing patience. Throughout his career, Mr. Raton's commitment had never flagged, and it was thanks to that commitment that he had successfully met the challenge of creating the International Law Seminar. Two former members of the Commission, Mr. Bartoš and Mr. Scelle, had not been mistaken about him. If, in his tribute, he had emphasized the man more than his work, it was because the value of Mr. Raton's work derived from his qualities as a man.

11. Sir Francis VALLAT said that although Mr. Raton had habitually been as modest and silent as he had been talented, it was impossible for the members of the Commission not to declare the esteem they felt for someone who had been a friend not only to the Commission as a whole, but also to each of them individually. All who had known Mr. Raton were aware what a loss his retirement represented to the Commission and the International Law Seminar.

12. Mr. YANKOV said that the value of the contribution which Mr. Raton, as a model international civil servant, had made to the work of the Commission and to the development of future generations of international lawyers had rapidly become apparent even to a relative newcomer to the Commission like himself. He would remember Mr. Raton for the substance of that contribution, for his unfailing friendliness and kindness and for his exceptional knowledge of international law and other fields.

13. Mr. BARBOZA associated himself with all the tributes that had been paid to Mr. Raton.

14. Mr. RATON (Senior Legal Officer, Legal Liaison Office) thanked the Chairman and the members of the Commission for the tribute they had paid him. He had always had a soft spot for the Commission because it had provided a breath of fresh air in his life as an international civil servant. It was thanks to the Commission that he had been able to maintain and perfect his knowledge of international law, and thanks to the Seminar that he had been able to remain abreast of the thinking of the new generation of diplomats and professors.

15. He was pleased to note that the members of the Commission who had had such kind words to say about him came from all over the world. While organizing the Seminar, he himself had always striven to be absolutely impartial. He had always seen to it that the Seminar was open only to young jurists from developing countries because it was essential for them to be in contact with jurists from developed countries.

Co-operation with other bodies

[Item 11 of the agenda]

**WELCOME TO THE OBSERVER FOR THE
INTER-AMERICAN JURIDICAL COMMITTEE**

16. The CHAIRMAN welcomed Mr. Aja Espil, Observer for the Inter-American Juridical Committee.

17. Mr. BARBOZA welcomed Mr. Aja Espil as the representative of a venerable organ embodying the Latin-American legal tradition, which had contributed so much to international law in general, as a distinguished compatriot and as a friend and collaborator.

18. Mr. PINTO said that, as the Commission's representative to the January 1981 session of the Inter-American Juridical Committee, he had not merely had the good fortune to meet Mr. Aja Espil and his distinguished colleagues, but had been able to see at first hand that their work was of the highest order. The Commission should avail itself of Mr. Aja Espil's presence to discuss the many ideas which he knew Mr. Aja Espil had for strengthening the relationship between it and his Committee.

19. Mr. AJA ESPIL thanked the Commission for its welcome and associated himself with the tribute paid to Mr. Raton.

The meeting rose at 4 p.m.

1681st MEETING

Tuesday, 30 June 1981, at 10.15 a.m.

Chairman: Mr Doudou THIAM

Present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Suchar-itkul, Mr. Ushakov, Sir Francis Vallat, Mr. Yankov.

**Questions of treaties concluded between States and international organizations or between two or more international organizations (continued)*
(A/CN.4/339 and Add.1-7, A/CN.4/341 and Add.1, A/CN.4/L.327)**

[Item 3 of the agenda]

**DRAFT ARTICLES PROPOSED BY THE
DRAFTING COMMITTEE¹**

* Resumed from the 1679th meeting.

¹ For the initial discussion at the present session of the draft articles, see 1644th to 1652nd, and 1673rd to 1679th meetings.

1. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that he had the honour to introduce the draft articles proposed by the Committee, contained in document A/CN.4/L.327.

2. In order to highlight the relationship between the draft articles and the corresponding provisions of the Vienna Convention,² the Drafting Committee had retained the numbering adopted on first reading, which was the same as for the Convention. Provisions of the draft which had no equivalent in the Convention were designated *bis*, *ter*, etc., as appropriate. The Committee had borne in mind that it was not the intention of the Commission to complete the second reading of the draft articles at the present session. The question of the final numbering and the title of the articles could be dealt with after the second reading, at which stage the Drafting Committee would, in accordance with past practice, also undertake the final polishing of the draft as a whole. In that respect, the Committee had sought to do everything possible for the time being. For example, square brackets had been eliminated wherever they appeared in the draft adopted on first reading.

3. In reviewing the draft articles referred to it, the Committee had considered whether it was possible, in specific instances, to consolidate the text of individual articles, as had been suggested in the observations of Governments and in comments made in the Commission, and as had been proposed by the Special Rapporteur in his tenth report (A/CN.4/341 and Add.1). Whenever the characteristics of the types of treaty so warranted, the Drafting Committee had decided to maintain the textual distinctions made in the articles adopted on first reading, with a view to achieving clarity and precision and thus facilitating the application and interpretation of the rules concerned. On the other hand, when repetition was deemed less justified, the Committee had proceeded to simplify the text as far as possible by merging two paragraphs into one paragraph, which was applicable to all the treaties that were the subject-matter of the draft. That had been done in the case of articles 13, 15 and 18.

4. In drafting the various language versions of the articles, the Committee had attempted to reflect the Commission's intention to maintain to the maximum the spirit and language of the Vienna Convention. In some instances it had therefore reverted to the language of that Convention. The titles of parts I and II and of part II, section 1, reproduced those found in the Vienna Convention.

5. The Drafting Committee proposed that the title of part I should read: "Part I. Introduction".

The title of Part I was adopted.

ARTICLE 1³ (Scope of the present articles) and

² See 1644th meeting, footnote 3.

³ For the initial consideration of the text by the Commission at the present session, see 1644th meeting, paras. 28 to 36.