Summary record of the 1687th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1981. vol. I
opinions. Since he himself had been unable to study the report well enough in advance, he needed more time to think about it. He was nevertheless pleased to note that the Special Rapporteur’s views had been put into concrete form in draft article 1.

37. At the current meeting, the Special Rapporteur had described the historical backdrop against which his proposals must be considered. Although there was little doubt that the members of the Commission agreed on the need to deal with the topic, the essential requirement was to be able to derive from existing law a number of general rules that could be embodied in draft articles. From an historical point of view, the topic did, of course, raise many problems, but it was on the way of dealing with those problems that the members of the Commission had to adopt a stance. Although he shared the Special Rapporteur’s view concerning the possibility of laying down general rules, he was not sure which approach to adopt. In his opinion, the principle that a State had a duty to take account of the interests of other States when activities that might be harmful to those States were undertaken in its territory was paramount. It was, of course, open to question whether that principle derived from treaty practice or whether it was part of general international law and already constituted a rule of customary law. That principle had been invoked not only in the Trail Smelter case, the Corfu Channel case and the Declaration of the United Nations Conference on the Human Environment, but also in the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water (Moscow, 1963), of which it formed the basis. Although that principle obviously underlay the topic being considered by the Commission, it was not clear to what extent the Commission could expand upon it with a view to elaborating draft articles.

38. Many members of the Commission seemed to be of the opinion that it would be difficult to lay down a general rule and that it would be better to provide for specific regimes relating to various areas. He was willing to try to formulate a general regime through the progressive development of international law, but he was not sure how far the Commission could go in that direction.

39. In his view, the international liability with which the Commission was now dealing definitely derived from primary rules. The further the Commission went in its study of the topic, the more problems it would encounter in relation to the topic of State responsibility for internationally wrongful acts. In view of the difficulty of drawing a line of demarcation between the two topics, as the Commission must now do, it was debatable whether it had really been wise in deciding to deal with them separately.

40. Turning to article 1, he pointed out that it would be advisable for it to be preceded by definitions. It would be helpful to know exactly what the Special Rapporteur meant by terms such as “activities” or “potential injury”.

41. With regard to subparagraph (a), he said that the draft articles should apply not only to activities that gave rise to loss or injury “to another State or its nationals”, but also to areas not within the sovereignty of States, or, in other words, to the common heritage of mankind. Subparagraph (b), which referred to the obligations of a State within whose territory or jurisdiction activities were undertaken, might be made into a separate article, because it was important to define clearly the scope of the draft articles and the present case would not be the first in which a draft contained a safeguard clause of that kind.

The meeting rose at 1.10 p.m.

1687th MEETING

Thursday, 9 July 1981, at 10.10 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Boutros Ghali, Mr. Calle y Calle, Mr. Dadzie, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Uschakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

International liability for injurious consequences arising out of acts not prohibited by international law (continued) (A/CN.4/346 and Add.1 and 2)

DRAFT ARTICLE SUBMITTED BY THE SPECIAL RAPPORTEUR (continued)

ARTICLE 1 (Scope of these articles) (continued)

1. Mr. YANKOV said that the topic before the Commission involved questions to which there were no clear-cut answers. It was also complex, and it related to what might be termed the twilight zone of international law. Consequently, it was important to establish a link between it and other topics.

2. He endorsed the Special Rapporteur’s statement in paragraph 18 of his report (A/CN.4/346 and Add.1 and 2) that “the new topic is not a competitor in the field of secondary rules, but a catalyst in the field of primary rules”. That statement gave some idea of the complexity of the problem, particularly since, as was pointed out in paragraph 19 of the same document, the
topic is itself confined to situations in which the rules of State responsibility for wrongful acts have not been engaged. The question, therefore, was to determine where the dividing line lay between harm and what the Special Rapporteur had called non-wrongfulness. Which acts not prohibited by international law gave rise to international liability? How was the freedom of States within their own boundaries to be balanced against the obligation of non-interference within the borders of other States? That question arose in a particularly acute form in certain areas such as the law of the sea where the traditional freedom of the high seas had to be reconciled, in the newly emerging regime, with the need to protect the marine environment and other aspects of the common heritage of mankind.

3. So far as protection of the human environment was concerned, the number of international instruments that regulated the activities of States increased every year. Since 1980, three important new conventions closely concerned with marine pollution and safety of life at sea had come or were about to come into force: the Protocol of 1978 Relating to the International Convention for the Safety of Life at Sea, of 1974;\(^2\) the International Convention for the Prevention of Pollution from Ships, of 1973;\(^3\) modified by the Protocol of 1978;\(^4\) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, of 1978\(^5\) (one of whose objectives was to increase safety of navigation).

4. There had also been a marked increase during the past decade in the number of international standards and regulations relating to the design, construction, manning and navigation of ships that had been developed to prevent maritime accidents that caused pollution. IMCO's Maritime Safety Committee had been involved in the development of such standards and regulations, and its Marine Environment Protection Committee had been concerned with improving cargo handling with a view to avoiding discharge of polluting agents during routine ship operations. If, then, the Special Rapporteur was thinking in terms of applying the draft articles to the area of the marine environment, he should bear in mind that by the time the articles were submitted to Governments for consideration there would be a large body of rules and regulations a breach of which would give rise to international responsibility.

5. On the duty of care, he agreed that, where there was a legally defined duty, non-observance thereof constituted a violation of the law which would give rise to liability. It was a difficult matter, and he had serious doubts whether the duty of care as defined by the Special Rapporteur could be regarded as a promising area for treatment under the rules.

6. While he agreed with the Special Rapporteur that the topic was mainly of a procedural character, he considered that the articles would be far more effective if they included provision for the settlement of disputes. Whether or not such provision was embodied in the articles on scope was a secondary matter; what was essential, since the subject fell into a fringe area, was that the provision should be made. In that connection, the Special Rapporteur might wish to consult, for guidance, the Draft Convention on the Law of the Sea\(^6\) and, specifically, articles 246 (Marine scientific research in the exclusive economic zone and on the continental shelf), 279 (Obligation to settle disputes by peaceful means), 280 (Settlement of disputes by means chosen by the parties), 287 (Choice of procedure), 297 (Limitations ...) and 298 (Optional exceptions) and Annex V (Conciliation).

7. Lastly, with regard to the scope of the articles, and more specifically to draft article 1, he considered that the main purpose should be to identify the substantive elements inherent in the nature of those injurious acts not prohibited by international law which gave rise to the liability of the State. Even if the Special Rapporteur decided against a set of clear definitions, the main ingredients of such an act should at least be identified, with a view to facilitating the Commission in its task. He would have difficulty in pronouncing on the merits of draft article 1 without some idea of the basic notions involved. It might therefore be advisable, particularly since the subject as a whole required much closer study and consideration, to discuss draft article 1 when a few more details were available.

8. Mr. VEROSTA said that the Special Rapporteur had raised most of the questions which required an answer, and had rightly focused attention on the Trail Smelter case (see A/CN. 4/346 and Add.1 and 2, paras. 22 et seq.), which covered virtually all the elements the Commission needed to consider.

9. The complexity of the topic was immediately illustrated by its title, for the English word "liability" was rendered in French and Spanish, respectively, by "responsabilité" and "responsabilidad". That was a difference of which the Commission must be aware. Furthermore, article 1 referred to the "activities" of the State, whereas Part I of the draft articles on State responsibility spoke of an "act of the State".\(^7\) The relationship between those two expressions would have to be clarified in the commentary. Again, the injurious consequences considered in article 1 were those which harmed "legally protected interests", meaning, undoub-

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\(^4\) IMCO, op. cit., p. 37.


\(^6\) See 1686th meeting, footnote 2.

\(^7\) See Yearbook . . . 1980, vol. II (Part Two), pp. 30 et seq.
national rule embodying a prohibition. If such a rule depending on whether or not there existed an inter-

point of wrongfulness, two situations could arise, of good neighbourliness. Such a situation did not come

to a situation coming under the heading of the topic of State responsibility. On the near side of the

existed, its breach would, as Mr. Verosta had said, give

harmful. Thus, certain activities undertaken by coastal

States must have substantial injurious consequences

sequence of conduct; while neither the damage nor the con-

duct was prohibited, there was an obligation of compen-

sation. With respect to the environment, however, damage was prohibited; a certain point of

wrongfulness must not be exceeded and harm must not

be done to others. Of the activities of that kind that

were now considered lawful would no longer be so under those new rules. Should that logical

approach fail to convince, yet another reason could be

adduced for excluding environmental law from the regulatory exercise envisaged by the Commission: envi-

ronmental law imposed duties, such as the duty to

hold prior consultations and the duty to provide

information, and could even lead to the prohibition of a

scheduled activity, so that it was not content with

absolute liability that gave rise only to an obligation to compensate.

14. With regard to the second area, he said that most

legal systems recognized the concept of strict liability for hazardous activities the execution of which might

cause serious accidents. Even if all due care was taken,
technology was powerless to prevent such accidents. Nevertheless, hazardous activities were not prohibited,
because they benefited society. Those who benefited
directly from them must, however, assume certain responsibilities towards possible innocent victims. At
the international level, that system was characterized

by the fact that the damage caused was the conse-

quence of conduct; while neither the damage nor the con-

duct was prohibited, there was an obligation of compensa-

tion. With respect to the environment, however, damage was prohibited; a certain point of

wrongfulness must not be exceeded and harm must not

be done to others. Of the activities of that kind that

were carried out in international life, the Special Rap-

porteur had mentioned at least three categories that

entailed such responsibility: activities relating to the

launching of space objects, the peaceful use of

nuclear energy, and the carriage of oil by sea. The

agreements that had been concluded on activities of

that kind seemed to establish a sort of absolute liability. Indeed, it was precisely for activities of that kind that

States seemed to have preferred to conclude specific

multilateral conventions. That approach seemed better

than to attempt to devise rules covering all types of

hazardous activity. As the Special Rapporteur had

indicated in his report, it would be extremely
difficult to draw up, in the abstract, a balance sheet of

all the interests to be taken into account in order to
determine the point of intersection below which certain

hazardous activities could be authorized.

15. With regard to the third area, which was covered

by article 35 of Part I of the draft articles on State

responsibility, he said that the cases to which that

provision applied were marginal ones. According to

article 35,
Preclusion of the wrongfulness of an act of a State by virtue of the provisions of articles 29, 31, 32 or 33 does not prejudice any question that may arise in regard to compensation for damage caused by that act.

The articles to which article 35 referred provided for the preclusion of wrongfulness in cases of consent, force majeure and fortuitous event, distress, and state of necessity. It was precisely because the duty of reparation or compensation was rather poorly defined by international law in cases of that kind that the wording of article 35 was vague; it did not provide for any obligation of reparation or compensation. Although the third area it covered was not extensive, it would be helpful if it could be stated as a general principle that an innocent victim must be compensated; that would be tantamount to recognizing the existence of damage that entailed responsibility.

16. He was of the opinion that the duty of care was related to the prohibitions which were required to protect the environment. Thresholds should be set above which failure to perform that duty would give rise to wrongfulness. With regard to the balance of interests, he observed that an attempt at an in-depth evaluation of the interests involved had been made (apparently without much success) in a convention concerning watercourses. Certain uses of water had been considered as more important than others: well-established uses had been given priority over new uses, and uses for vital human needs had been given priority over less essential uses, such as recreational ones. In any event, it would probably be better for interests to be balanced by the parties concerned rather than, in a very general manner, by the Commission.

17. He would not make any comments on article 1 as proposed by the Special Rapporteur, since he was unable to compare it to other draft articles and so gain a more general idea of the articles as a whole.

18. Mr. NJENGA said that the Special Rapporteur had been right to consider the Trail Smelter case in considerable detail. The facts were not exceptional; the activity in question had been neither extraordinary nor ultra-hazardous, and the manner of its performance had not been in any way negligent, bearing in mind the technology available at the time. The case thus embodied all the elements that had to be dealt with when defining the general principles of the subject under discussion. Moreover, it offered a firm anchor for the development of the subject and for ascertaining what its scope should be in terms not only of the environment, but of all other aspects of inter-State relations.

19. He could not accept the proposition that, when carrying out activities within its own jurisdiction, a State did not owe a duty of care to other States that might be affected. That was not consistent with the authorities or with State practice. Indeed, to allow every State to do whatever it liked within its own boundaries, irrespective of the consequences, would be to revert to the law of the jungle. The fact that certain ultra-hazardous activities had been created by conventions did not go to disprove that a duty of care attached to activities conducted within national territory. On the contrary, it showed that in certain specific instances conventions were needed to regulate such ultra-hazardous activities or activities which affected matters of common interest, such as the protection of the marine environment.

20. Professor Eagleton had been quoted in the report as saying: “A State owes at all times a duty to protect other States against injurious acts by individuals from within its jurisdiction” (A/CN.4/346 and Add.1 and 2, para. 35). Although he would not himself state the case in such absolute terms, he did believe that the Trail Smelter case had adequately clarified the concept of duty of care. It had been held in that case, for instance, that the economic loss suffered was too remote for the United States to merit compensation therefore. In other words, there was no question of absolute liability.

21. The Special Rapporteur had also considered the relevance and application of the draft articles to the new area of the marine environment, and in that connection Mr. Yankov had referred to a number of conventions. Those conventions were not, however, to be construed as disavowals of the concept of duty of care, but rather as departures from that concept in specific fields.

22. The need for a balancing of interests was to be seen not only where protection of the environment was concerned, but also in the case of the economic zone. Exploitation of that zone must take account of the legitimate interests of other States. The duty of care owed in such cases was not restricted to ultra-hazardous or to extraordinary activities. In his view, the Special Rapporteur had adopted the right approach in that connection, particularly in regard to strict liability.

23. With regard to the proposed draft article, he considered that there was much room for improvement. He would have been happier if the reference to “potential” loss or injury, which was extremely vague, had been omitted. Perhaps the Special Rapporteur would explain why he had included it. He agreed, however, that the article should be extended to cover the concept of the common heritage of mankind, including the marine environment and the environment in general. While he understood the purpose of subparagraph (b), he did not think much would be lost if it were omitted. What it was supposed to cover could be covered by individual conventions. He also agreed that no final decision as to scope could be taken until a few more articles were available and it was thus possible to see the picture in its proper perspective.

24. Sir Francis VALLAT congratulated the Special Rapporteur on his excellent report and oral presentation of the topic.

25. The fact that the topic lacked very clear-cut boundaries was not a good reason for refusing to deal
particularly wished to stress the irrelevance of the Commission's efforts from the outset. The so-called distinction between primary and secondary rules, and believed that whether any rules developed within the scope of the topic were regarded as primary or secondary was of little importance. Some members of the Commission were not entirely convinced that even the draft articles contained in Part 1 of the draft on State responsibility had been kept entirely within the proper scope of secondary rules. However, if the Commission had considered itself bound by the need to remain within that scope it would never have succeeded in completing the draft articles in their current form. By the same token, any attempt to apply strict analysis to the topic under consideration would doom the Commission's efforts from the outset.

26. He could not agree with the view that because any breach of a duty existing under international law must constitute an internationally wrongful act and was, therefore, subject to the rules contained in Part 1 of the draft it necessarily fell outside the scope of the present topic.

27. In approaching that topic, greater inspiration might be derived from the history of development of the common law than from civil law. The main original forms of action in common law were trespass to the person, trespass to land and trespass to chattels. However, as the needs of the community developed, it had been realized that there were other causes of damage or injury which the party responsible should be called upon to make good. That development had given rise to what had come to be known as "actions on the special case" which were related primarily not to the act performed, but to the damage or injury caused to the claimant. The burden then rested on the person injured to show that the injury was due to a failure on the part of the person causing the injury. Thus had begun the development of the huge body of law relating to negligence, which had come to be regarded as the essence of the kind of behaviour entailing liability. That type of empirical, pragmatic approach to the development of law could provide a lesson for the Commission in dealing with the topic under consideration. If the judges and legal authorities of the time had regarded themselves as bound by the restrictions of a law which depended on the prohibition of the performance of particular kinds of act, the development of both general and international law would have suffered. The adoption of a purely doctrinal approach would simply tie the hands of the Commission.

28. The title of the topic itself gave some guidance as to what should be excluded from its scope. The concept of acts not prohibited by international law and internationally wrongful acts were not mutually exclusive. The concept of internationally wrongful acts covered all cases in which international responsibility was entailed; it was not limited to acts that were per se wrongful, such as the invasion of the sovereign territory of one State by another, or the breach of a treaty. Broadly speaking, the Commission was concerned not with treaty law, but with customary international law, a fact which in itself considerably narrowed the scope of the topic.

29. Two types of situations which should be included in the scope of the topic were, first, those where injury or harm might have resulted in circumstances where no fault could properly be attributed to the State concerned, since it had quite lawfully undertaken an activity which nevertheless entailed serious risks, and, second, cases where a State might be regarded as liable to pay compensation on the ground that the acts for which it was responsible, though not in themselves prohibited, had resulted in harm attributable to negligence on its part. He agreed with the view expressed by Mr. Njenga that, in the modern world, the law could no longer be regarded as excluding liability for harm caused by one State to another as a result of negligence. The duty to take care must exist in any closely interdependent community. That was, admittedly, a difficult field, but one which fell well within the scope of the topic.

30. Such an empirical approach inevitably left the bounds of the topic vague. However, if the Commission was able to deal with only part of the areas to which it had referred, it would have achieved a breakthrough in customary international law. The mere fact that there could be a difference of views concerning the existence of the duty of care illustrated the need for a close examination of the topic from that point of view. In that regard, it was necessary to conduct a more thorough examination of State practice and jurisprudence. Although the Trail Smelter arbitration was undoubtedly an extremely valuable source of inspiration, there were surely many other arbitrations that would shed light on the duty of States to take care.

31. The draft article prepared by the Special Rapporteur was not a typical scope article, in that it was concerned more with the modalities of liability than with the definition of the subject matter to be dealt with. At the current stage, he would prefer to see what progress could be made on the kinds of subject matter identified in the Commission, possibly using the draft article simply as a guideline, rather than attempting to prepare a specific draft article.

Co-operation with other bodies (continued)*

[Item 11 of the agenda]  
STATEMENT BY THE OBSERVER FOR THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

32. The CHAIRMAN invited Mr. Harremoes, Observer for the European Committee on Legal Co-operation, to address the Commission.

* Resumed from the 1680th meeting.
33. Mr. HARREMOES (Observer for the European Committee on Legal Co-operation) said that the Council of Europe followed very closely the development of the varied and important questions with which the Commission dealt, although the heavy burden of work imposed by the Commission of Ministers sometimes prevented developments in Geneva and in New York from receiving the attention they merited. The work of the Commission could not fail to influence the scope and nature of activities pursued in regional organizations such as the Council of Europe.

34. Referring to the law-making activities of the Council of Europe over the past year, he said that the European Agreement on Transfer of Responsibility for Refugees had been opened for signature by member States on 16 October 1980. It had been signed by Belgium, Denmark, the Federal Republic of Germany, Greece, Luxembourg, Portugal, Switzerland and the United Kingdom and had been ratified by Sweden and Norway, thus entering into force. The main purpose of the Agreement was to facilitate the application of article 28 of the 1951 Geneva Convention relating to the Status of Refugees by regulating the transfer of responsibility for refugees between Council of Europe member States and specifying the circumstances in which responsibility for issuing a travel document was transferred when a refugee moved residence from one State to another. To that end, the Agreement endeavoured to strike a balance between the interests of the refugee and the interests of the first and second States concerned. It had been considered important to adopt a system which did not result in a person being neither readmissible to the first State in which he had originally obtained asylum nor regarded as established in the second State in which he was currently living. The provisions of the Agreement made it possible to determine in any given case which State was responsible for the refugee.

35. Under the terms of article 2 of the Agreement, responsibility could be transferred in four cases: after two years' actual and continuous stay in a second State with the consent of the authorities of that State; when the second State had allowed the refugee to remain in its territory on a permanent basis; when the second State had tolerated the presence of the refugee on its territory for a period exceeding the validity of the travel document issued to him; and when the refugee failed to request readmission to the first State before a certain date.

36. The Agreement expressly provided that from the date of its entry into force the provisions of bilateral agreements between contracting parties on the same subject would cease to be applicable. However, rights and benefits acquired, or in the course of being acquired, by refugees under such agreements would be preserved. Similarly, the preservation of any rights and benefits which had been, or might be, granted to refugees under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and other treaties, or under domestic law, would also be taken into consideration.

37. The new Agreement was a manifestation of the commitment of the Council of Europe to the legal protection of refugees. It was clearly inspired by the 1959 European Agreement on the abolition of visas for refugees and by a number of texts adopted by the Consultative Assembly of the Council of Europe.

38. The Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data had been opened for signature on 28 January 1981 and had been signed by Austria, Denmark, France, the Federal Republic of Germany, Luxembourg, Norway, Portugal, Sweden, Turkey and the United Kingdom. Data protection was a unique area, in which an entirely new corpus of law was being developed simultaneously at the national and international levels. In view of the challenges of the information revolution, European States had felt an urgent need for new legal rules that would strike a just balance between the requirements of society and the rights and interests of individuals. The Council of Europe considered both human rights and computer technology to be universal in character. It had therefore been a logical step to entrust the drawing-up of such new rules to his organization. The Committee had begun its efforts in the 1970s, concentrating on the formulation of principles laid down in two resolutions of the Committee of Ministers and dealing respectively with private and public data banks. Those principles had been a valuable source of inspiration to a number of member States, two of which, namely, Portugal and Spain, had even included data protection as a fundamental right in their new Constitutions.

39. The new Convention contained three categories of rules. First, it confirmed as rules of international law binding upon the contracting States those national principles which had been recommended in 1973 and 1974 for voluntary adoption by States. Second, it contained a solution to the problem of the international data protection applicable to transborder data flows. Third, it helped data subjects in one country to defend their rights with regard to information concerning them which was being automatically processed in another country. One of the main aims of the Convention was to avoid the creation in Europe of so-called data havens, where information could be stored without any legal protection for the data subjects.

40. There had also been a new development in the relations between the EEC and the Council of Europe. In 1979, the Council of the European Communities had authorized the Commission of the Communities to negotiate accession to three European agreements in the public health sector, since the subject-matter of those agreements had become the concern of the Communities and was no longer within the jurisdiction of the individual member States. While technically the ten member States were still the contracting
parties to those agreements, the real holder of sovereignty in the matter, namely, the Community, was not legally bound by them. During its negotiations with the Commission of the Communities, the Council of Europe had first proposed an amending protocol to be ratified by all contracting parties, like those adopted on two previous occasions. The Commission had suggested a protocol which would enter into force and become applicable after ratification by only three contracting parties. Since neither of those proposals had been acceptable to the other party, the secretariat of the Council of Europe had proposed that the Council's Committee of Ministers should adopt amending protocols to the three agreements and then open those protocols for acceptance by contracting parties. Under that proposal, which was to be submitted to the Committee of Ministers, the protocols would enter into force two years after being opened for acceptance, unless a contracting party had registered an objection. They would enter into force in respect of all contracting parties even if they had not been expressly accepted by them. That formula did not preclude ratification and subsequent deposit of an instrument of acceptance. It had been proposed as an informal and expeditious solution which preserved the rights of all the contracting parties and was being increasingly used in respect of formal regulations under, and minor amendments to, conventions. Such a procedure was also believed to be in full conformity with the Vienna Convention on the Law of Treaties.

41. The Council of Europe was continuing its activities in the legal sector under the Second medium-term plan 1981–1986. In the area of criminal law, work was continuing on a draft convention on the protection of art objects against theft, with a view to creating a European instrument more acceptable to Member States than the earlier UNESCO Convention on the subject. It was also felt that, among States having the same cultural traditions and socio-economic systems, it might be possible to give increased weight to preventive and repressive measures. The text had almost been finalized, with the exception of the difficult question of the legal position of the bona fide purchaser of a stolen object. The convention was expected to be approved and opened for signature towards the end of 1982.

42. Another convention would establish rules permitting the transfer of prisoners from one member State to another. It was proof of the interest of States outside the European region in that topic that work on the draft convention was being actively followed and supported by Canadian and American experts and that bilateral negotiations between those two States and several member States of the Council of Europe had been postponed pending the outcome of the negotiations in Strasbourg. That convention, too, was expected to be approved and opened for signature during 1982.

43. A convention concerning compensation to victims of crime was also envisaged. In 1976, the Committee of Ministers had adopted a resolution on the subject, recommending that States set up compensation schemes and, in doing so, apply the minimum guarantees laid down in that resolution. On the initiative of the Minister of Justice of the Federal Republic of Germany, an attempt was to be made to transform that resolution into a convention to become binding on member States. Work on the subject was due to start in 1982. However, given the current climate of budgetary austerity, member States might not be inclined to accept the additional financial burdens resulting from a new international treaty.

44. In the area of civil law, a draft convention on the protection of under-water cultural heritage was nearing completion. The text would supplement the 1969 European Convention on the Protection of the Archaeological Heritage. It was expected to be completed in 1982, and had the full support of the Council of Europe's Parliamentary Assembly. The convention would oblige each member State to take all necessary measures to protect its own under-water cultural heritage and to participate in the European effort to protect the heritage of member States as a whole.

45. Also in the process of elaboration was a convention on the retention of ownership clauses in commercial contracts. It constituted an example of the close and structured cooperation between the European Communities and the Council of Europe, in that the Council had taken up the subject which, according to the tacit understanding between the two organizations, would normally have been reserved for the Communities as being a vital aspect of the functioning of the economic system set up under the Treaty of Rome. However, the authorities in Brussels had considered that the subject had wider implications and that it was desirable to extend the geographical area in which legislative uniformity should be achieved. The drafting of the convention was a venture to which the Council attached both legal and political importance.

46. Experts were currently reviewing the final draft of a controversial convention dealing with the protection of animals used in laboratories for experimental purposes, a subject which aroused considerable public interest and emotion. It would be necessary to organize wide consultations, inter alia with the Parliamentary Assembly of the Council of Europe, before the text was finalized, with a view to striking a balance between the various interests involved and ensuring the speedy ratification and entry into force of the convention. It was likely that work would subsequently be started on a new convention on the protection of animals in national transport, which would lay down minimum European rules to be incorporated into national law.
47. The CHAIRMAN thanked the Observer for the European Committee on Legal Co-operation for describing that body’s activities. Europe made a substantial contribution to the work of the Commission, whose task it was to effect the synthesis of the world’s legal systems, for, historically, Europe was the point at which those systems met. The Commission would, therefore, unquestionably draw inspiration from the work of the Committee.

The meeting rose at 1 p.m.

1688th MEETING

Friday, 10 July 1981, at 10.20 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Boutros Ghali, Mr. Calle y Calle, Mr. Dadzie, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, Mr. Francis Vallat, Mr. Verosta, Mr. Yankov.

Resignation of a member of the Commission

1. The CHAIRMAN said that, in a letter addressed to him, dated 19 June 1981, Mr. Tsuruoka had submitted his resignation from the Commission. At a private meeting on 7 July 1981, the Commission had taken note with regret of that resignation. In a letter dated 10 July, the Chairman had informed Mr. Tsuruoka and the Secretary-General of the United Nations of the Commission’s decision.

2. At its private meeting on 7 July 1981, the Commission had elected Mr. Diaz González Chairman of the Drafting Committee, to replace Mr. Tsuruoka.

Succession of States in respect of matters other than treaties (continued)* (A/CN.4/338 and Add.1–4, A/CN.4/345 and Add.1–3)

[Item 2 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: second reading (continued)

ARTICLE 20 (Newly independent State),
ARTICLE 21 (Uniting of States),
ARTICLE 22 (Separation of part or parts of the territory of a State), and
ARTICLE 23 (Dissolution of a State)

* Resumed from the 1675th meeting.

3. The CHAIRMAN invited the Commission to consider articles 20 to 23, which read:

**Article 20. Newly independent State**

1. When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, unless an agreement between the newly independent State and the predecessor State provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.

2. The agreement referred to in paragraph 1 should not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor should its implementation endanger the fundamental economic equilibria of the newly independent State.

**Article 21. Uniting of States**

1. When two or more States unite and so form a successor State, the State debt of the predecessor States shall pass to the successor State.

2. Without prejudice to the provision of paragraph 1, the successor State may, in accordance with its internal law, attribute the whole or any part of the State debt of the predecessor States to its component parts.

**Article 22. Separation of part or parts of the territory of a State**

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree, an equitable proportion of the State debt of the predecessor State shall pass to the successor State, taking into account all relevant circumstances.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

**Article 23. Dissolution of a State**

When a predecessor State dissolves and ceases to exist and the parts of its territory form two or more States, and unless the successor States otherwise agree, an equitable proportion of the State debt of the predecessor State shall pass to each successor State, taking into account all relevant circumstances.

4. Mr. BEDJAOUI (Special Rapporteur) reminded members that article 20 dealt with succession of States in the event of decolonization. It had been the subject of conflicting written and oral comments. Some considered that the article was inadequate, and that it should stipulate more categorically for the non-transferability of any debt whatsoever to the newly independent State. Others, on the other hand, felt that it did not give sufficient weight to the need to assign to the newly independent State certain debts entered into for the benefit of the former territory.

5. That divided view of the same article would seem to confirm that its terms achieved a certain balance and did indeed constitute a compromise formula. He therefore trusted that the Commission would not modify its content.

6. Article 20 first laid down, in paragraph 1, the principle that debts did not pass to the newly