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**A/CN.4/SR.1748**

**Summary record of the 1748th meeting**

Topic:  
**Other topics**

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of his facilities, privileges and immunities, as explained in his third report (A/CN.4/359 and Add.1, paras. 111-113). The commencement of the courier's functions, as opposed to the moment of their acknowledgement by the receiving State, was a point that deserved careful consideration.

50. Article 13, subparagraph (a), was important for differentiating between the status of a courier *ad hoc* and a professional courier. According to international law, a courier *ad hoc* ceased to enjoy privileges and immunities upon the completion of his task. He would gladly delete subparagraph (d), to which some members had objected; however, the point it dealt with should come to the forefront in connection with the status of the bag, in part III. As members had pointed out, not only the courier's death but also his complete incapacitation and the situation envisaged by article 14, paragraph 2, were relevant to the status of the bag.

*The meeting rose at 12.45 p.m.*

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## 1748th MEETING

*Monday, 19 July 1982, at 3 p.m.*

*Chairman:* Mr. Paul REUTER  
*later:* Mr. Leonardo DÍAZ GONZÁLEZ

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### Draft report of the Commission on the work of its thirty-fourth session

1. The CHAIRMAN invited the Commission to consider its draft report, chapter by chapter, starting with chapter II.

*Mr. Díaz González, first Vice-Chairman, took the chair.*

#### CHAPTER II. *Question of treaties concluded between States and international organizations or between two or more international organizations* (A/CN.4/L.344 and Add.1-6)

##### A. Introduction (A/CN.4/L.344)

Paragraphs 1-30

*Paragraphs 1-30 were adopted.*

Paragraphs 31-33

2. Sir Ian SINCLAIR, supported by Mr. McCAFREY, proposed the replacement, in the English text, of the word "consensus" in the first sentence of paragraph 31 and in the third sentence of paragraph 32 and of the word "consensualism" in the first sentence of paragraph 33, by the word "consensuality".

*It was so decided.*

*Paragraphs 31 to 33, as amended, were adopted.*

Paragraphs 34 to 44

*Paragraphs 34 to 44 were adopted.*

*Section A, as amended, was adopted.*

##### B. Recommendation of the Commission (A/CN.4/L.344)

Paragraph 45

*Paragraph 45 was adopted.*

Paragraph 46

3. Mr. ILLUECA said that he agreed with the recommendation in paragraph 46 that the General Assembly should convene a conference to give the draft articles the status of a convention. In that connection, he wished to express his admiration and gratitude to the Special Rapporteur and to thank the members of the Bureau and the staff of the Codification Division as well. The work done on the question of treaties concluded between States and international organizations or between two or more international organizations, the principal topic for consideration at the Commission's thirty-fourth session, represented a noteworthy contribution to international law. Unfortunately, recent events in Latin America, which were leading the countries of that region to adopt a new and radical orientation in their relations within the American continent and with the rest of the world, had prevented him from participating earlier in the work of the Commission. The second preambular paragraph of General Assembly resolution 1505 (XV) was surely an invitation to the Commission to pursue its task of codification and progressive development of international law without losing sight of world occurrences of great importance which might necessitate the adoption of new rules.

*Paragraph 46 was adopted.*

Paragraph 47

*Paragraph 47 was adopted.*

Paragraph 48

4. Sir Ian SINCLAIR said that, in view of the persuasive reasons given in paragraph 47 for recommending to the General Assembly that the draft articles should be given the form of a convention, the second sentence in paragraph 48, which might create the impression that the Commission was seeking to establish a *jurisprudence constante*, should be deleted.

*It was so decided.*

*Paragraph 48, as amended, was adopted.*

Paragraph 49

5. Mr. REUTER (Special Rapporteur), referring to the French version, proposed that in the third sentence the word "*déciderait*" should be replaced by the word "*décide*", which was more positive; it could be left to the Secretariat to make any necessary changes in the other language versions.

*Paragraph 49, as amended, was adopted.*

Paragraph 50

*Paragraph 50 was adopted.*

*Section B, as amended, was adopted.*

**C. Draft articles on the law of treaties between States and international organizations or between international organizations**  
(A/CN.4/L.344/Add.1-5)

PART I (INTRODUCTION) (A/CN.4/L.344/Add.1)

*Commentary to article 1* (Scope of the present articles)

6. Sir Ian SINCLAIR said that the last sentence of the commentary should be related more closely to the definition of the word “treaty” in article 2, subparagraph 1 (a). He therefore proposed the addition to that sentence of the phrase “as defined in article 2, subparagraph 1 (a),” after the words “a treaty”.

*It was so decided.*

*The commentary to article 1, as amended, was approved.*

*Commentary to article 2* (Use of terms)

Paragraphs (1) to (3)

*Paragraphs (1) to (3) were approved.*

Paragraph (4)

7. Sir Ian SINCLAIR said that, while the phrase “if it is not by virtue of its purpose and terms of implementation placed under” in the second sentence of the paragraph might be a proper translation of the original French text, it was not clear in English. He suggested that it should be replaced by the words “if it is not expressly or by necessary implication made subject to”. However, if the corresponding passage in the French version, “*s'ils ne se trouvent pas placés par leur objet et leurs conditions d'exécution*”, had a special significance, it would be helpful to explain it in a footnote.

8. Mr. REUTER (Special Rapporteur) said he realized that even in the French text the phrase referred to by Sir Ian Sinclair was somewhat enigmatic. It should be read together with article 27. The reference to terms of implementation was to be explained by the fact that, when two United Nations Member States concluded an agreement that was wholly dependent on the implementation of a Security Council resolution, that agreement could be regarded as subject not only to general international law but also to the law of the United Nations. As to the reference to purpose, he would illustrate the point by the following example: an agreement concluded between two subsidiary organs of the United Nations for the purpose of governing technical assistance relations could likewise be considered, given its purpose, as being subject both to general international law and to the internal law of the United Nations. When the Commission had endeavoured to ascertain the legal nature of the agreements concluded by the subsidiary organs of the United Nations, it had received only vague information, which showed that practice in the matter was undecided.

He had referred to the problem at several points in the report.

9. That was why, taken in isolation, the expressions to which Sir Ian Sinclair had referred were not very clear. They might either be replaced by the wording which Sir Ian had suggested, or be retained and accompanied by a footnote referring to the relevant passages of the commentary to the draft.

10. Mr. KOROMA, referring to paragraph (3), and in particular to the last sentence, said he felt that the text might perhaps be improved in the light of the explanation given by the Special Rapporteur.

11. Mr. REUTER (Special Rapporteur) said the Secretariat would endeavour to improve the wording of paragraph (3), the object of which was to indicate that the Commission had not had to deal with the problem as such. The problem of determining the proper law of the contract was well known in private international law. More generally, a question that often arose was whether a conventional act was a treaty in international law—an agreement subject to both general international law and the law of a particular international organization—or a contract governed by the law of a given State. It was not, of course, for the draft to indicate criteria for deciding that. Such an indication would perhaps rebut to some extent the presumption expressed in paragraph 4 that the parties intended the agreement to be governed by general international law. Nevertheless it did seem that the conventional acts of subjects of general international law could be presumed normally to fall within the scope of general international law. However, it was by no means rare for States to conclude conventional acts that were simply contracts governed by a particular municipal law.

*Paragraph (4) was approved in the light of those clarifications.*

Paragraphs (5) to (8)

*Paragraphs (5) to (8) were approved.*

Paragraph (9)

12. Mr. KOROMA asked for some enlightenment on the statement in the first sentence of paragraph (9) that “ratification amounts to the definitive confirmation of a willingness to be bound which has, in the first instance, been manifested without commitment.”

13. Mr. REUTER (Special Rapporteur) said that the willingness of a State to be bound by a treaty could be expressed provisionally by signature and then definitively by ratification. In its desire to afford international organizations the same possibility, but without using the word “ratification”, which was reserved for States, the Commission had undertaken an analysis of ratification. It had found that ratification by a State was, in short, a confirmation and had decided to use the expression “act of formal confirmation” for international organizations. But States as well as organizations could, by accession or acceptance, express in one single act their

willingness to be bound. The Commission might have noted that the expression “*acte de confirmation formelle*” had been used in article 3 of annex IX to the recent Convention on the Law of the Sea, but no final equivalent for that expression had yet been found for the English text of the Convention.

14. Sir Ian SINCLAIR said that, in the English text of paragraph (9), the first sentence was ambiguous, because it was not clear whether it was the willingness to be bound or the confirmation of that willingness, and thus ratification, which had “in the first instance, been manifested without commitment”. It might perhaps be best to delete the final clause of the sentence.

15. Mr. McCAFFREY approved Sir Ian Sinclair’s suggestion; another solution would be to add the word “willingness” after the word “which”.

16. Mr. THIAM pointed out that a treaty could come into effect without having been ratified. That being so, he proposed the deletion of the words “which has, in the first instance, been manifested without commitment”.

*It was so decided.*

*Paragraph (9), as amended, was approved.*

Paragraphs (10)-(16)

*Paragraphs (10)-(16) were approved.*

Paragraph (17)

17. Mr. KOROMA referred to the clause in the fourth sentence reading “or because the organization has committed itself by way of a unilateral declaration (assuming that to be possible)”. He suggested that examples of that possibility should be given in a footnote.

18. Mr. REUTER (Special Rapporteur) said that the examples given in paragraph 49 of chapter II might be referred to in such a footnote.

*Paragraph (17) was approved, subject to the addition of a footnote to that effect.*

Paragraphs (18)-(26)

*Paragraphs (18)-(26) were approved.*

*The commentary to article 2, as amended, was approved.*

*Commentary to article 3* (International agreements not within the scope of the present articles)

*The commentary to article 3 was approved.*

*Commentary to article 4* (Non-retroactivity of the present articles)

*The commentary to article 4 was approved.*

*Commentary to article 5* (Treaties constituting international organizations and treaties adopted within an international organization)

*The commentary to article 5 was approved.*

*Part I, as amended, was adopted.*

PART II (CONCLUSION AND ENTRY INTO FORCE OF TREATIES) (A/CN.4/L.344/Add.1)

SECTION 1 (Conclusion of treaties)

*Commentary to article 6* (Capacity of international organizations to conclude treaties)

Paragraphs (1) to (4)

*Paragraphs (1) to (4) were approved.*

Paragraph (5)

19. Sir Ian SINCLAIR said that practice might play a part in connection with article 6, but only through the relevant rules of the organization. He therefore proposed that the beginning of the last sentence of the paragraph should be amended to read: “For these reasons, practice as such was not specifically mentioned in article 6”.

*It was so decided.*

*Paragraph (5), as amended, was approved.*

Paragraph (6)

*Paragraph (6) was approved.*

Paragraph (7)

*Paragraph (7) was approved.*

*Commentary to article 7* (Full powers and powers)

Paragraphs (1) to (12)

*Paragraphs (1) to (12) were approved.*

Paragraph 13

20. Mr. McCAFFREY said that paragraphs (10) to (13) discussed the reasons why the verb “to express” had been preferred to the verb “to communicate”. First a case was made for using the verb “to communicate”, then the problems involved in doing so were pointed out, and finally paragraph (13) dealt with the decision to use the verb “to express”. However, nowhere was it stated that, by using that term, the Commission did not mean to imply that a representative of an organization might simply declare a consent that did not emanate from the competent organ of a State or organization. He therefore proposed that a sentence should be added to that effect.

21. Mr. REUTER (Special Rapporteur) said that, if the contents of paragraph (14) did not suffice to dispel the doubt expressed by Mr. McCaffrey, paragraph (13) might be expanded by the addition of a sentence stating that: “In the text of the draft articles, the verb “to express” covers, as appropriate and without distinction, the case of a consent made public by the person that had established it legally and the case of a consent made public by a person other than the person or entity (the competent organ, whatever that might be) that had established it legally.”

*It was so decided.*

*Paragraph (13), as amended, was approved.*

Paragraphs (14) and (15)

*Paragraphs (14) and (15) were approved.*

*The commentary to article 7, as amended, was approved.*

*Commentary to article 8* (Subsequent confirmation of an act performed without authorization)

*The commentary to article 8 was approved.*

*Commentary to article 9* (Adoption of the text)

*The commentary to article 9 was approved.*

*Commentary to article 10* (Authentication of the text)

*The commentary to article 10 was approved.*

*Commentary to article 11* (Means of expressing consent to be bound by a treaty)

*The commentary to article 11 was approved.*

*Commentary to article 12* (Consent to be bound by a treaty expressed by signature)

*The commentary to article 12 was approved.*

*Commentary to article 13* (Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty)

*The commentary to article 13 was approved.*

*Commentary to article 14* (Consent to be bound by a treaty expressed by ratification, act of formal confirmation, acceptance or approval)

Paragraph (1)

22. Sir Ian SINCLAIR supported by Mr. McCAFFREY, proposed the deletion from the second sentence of the words “at least in the French version”, since the comment applied to all the versions.

*It was so decided.*

23. Mr. McCAFFREY further proposed that in the English version of that sentence the words “*un acte de confirmation formelle*” should be replaced by their equivalent in English.

*It was so decided.*

*Paragraph (1), as amended, was approved.*

Paragraph (2)

*Paragraph (2) was approved.*

*The commentary to article 14, as amended, was approved.*

*Commentary to article 15* (Consent to be bound by a treaty expressed by accession)

24. Mr. REUTER (Special Rapporteur) proposed that, in the French version, the first part of the penultimate sentence should be amended to read: “*Par ailleurs, le présent projet ne devrait pas viser une telle situation ...*”. That would make it quite clear that the

sentence contained the expression of the views of one member of the Commission.

*It was so decided.*

*The commentary to article 15, as amended, was approved.*

*Commentary to article 16* (Exchange or deposit of instruments of ratification, formal confirmation, acceptance, approval or accession)

*The commentary to article 16 was approved.*

*Commentary to article 17* (Consent to be bound by part of a treaty and choice of differing provisions)

*The commentary to article 17 was approved.*

*Commentary to article 18* (Obligation not to defeat the object and purpose of a treaty prior to its entry into force)

25. Sir Ian SINCLAIR proposed that the last sentence of the commentary should be amended to read: “Consequently, the reference is to “a treaty” as defined in article 2, subparagraph 1 (a), but without distinguishing between the two types of treaties involved.”

*It was so decided.*

*The commentary to article 18, as amended, was approved.*

*Section 1, as amended, was adopted.*

SECTION 2 (Reservations)

*Commentary to section 2*

26. Mr. REUTER (Special Rapporteur) proposed that the title “Commentary” should be amended to read “General commentary to section 2”, since the commentary applied to the section as a whole.

*It was so decided.*

Paragraph (1)

27. Mr. REUTER (Special Rapporteur), referring to the second sentence, proposed the addition of the words “in first reading” after the word “discussions”. He further proposed that in the French version of footnote 24 the date “28 May 1951” be underlined, since it formed part of the title of the publication.

*It was so decided.*

28. Sir Ian SINCLAIR proposed that the third and fourth sentences in the English text should be connected by a semi-colon instead of being separated by a full stop, since it was exclusively in the Sixth Committee that the question had been touched upon in 1978 and 1979. He further proposed that, in the English text of the last sentence, the words “brought up” should be replaced by the words “brought out”.

*It was so decided.*

29. Mr. REUTER (Special Rapporteur) proposed that in the French text the colon after the third sentence should be replaced by a semi-colon.

*It was so decided.*

*Paragraph (1), as amended, was approved.*

Paragraph (2)

30. Mr. REUTER (Special Rapporteur), referring to the French text, proposed that, in the opening portion of the first sentence, the words "*quelles sont*" should be amended to read "*quelles étaient*".

*It was so decided.*

*Paragraph (2), as amended, was approved.*

Paragraphs (3) to (15)

*Paragraphs (3) to (15) were approved.*

*The general commentary to section 2, as amended, was approved.*

*Commentary to article 19* (Formulation of reservations)

*The commentary to article 19 was approved.*

*Commentary to article 20* (Acceptance of and objection to reservations)

31. Mr. REUTER (Special Rapporteur), referring to the French text, said that in footnote 44 the words "*de toute différence*" should be replaced by the words "*de toute référence*".

*It was so decided.*

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

*Commentary to articles 21* (Legal effects of reservations and of objections to reservations), *22* (Withdrawal of reservations and of objections to reservations) *and 23* (Procedure regarding reservations)

*The commentary to articles 21, 22 and 23 was approved.*

*Section 2, as amended, was adopted.*

SECTION 3 (Entry into force and provisional application of treaties)

*Commentary to articles 24* (Entry into force) *and 25* (Provisional application)

*The commentary to articles 24 and 25 was approved.*

*Section 3 was adopted.*

*Part II, as amended, was adopted.*

PART III (Observance, application and interpretation of treaties) (A/CN.4/L.344/Add.1 and 2)

SECTION 1 (Observance of treaties)

*Commentary to article 26* (Pacta sunt servanda)

*The commentary to article 26 was approved.*

*Commentary to article 27* (Internal law of States, rules of international organizations and observance of treaties)

*The commentary to article 27 was approved.*

*Section 1 was adopted.*

SECTION 2 (Application of treaties)

*Commentary to article 28* (Non-retroactivity of treaties)

*The commentary to article 28 was approved.*

*Commentary to article 29* (Territorial scope of treaties)

*The commentary to article 29 was approved.*

*Commentary to article 30* (Application of successive treaties relating to the same subject-matter)

*The commentary to article 30 was approved.*

*Section 2 was adopted.*

SECTION 3 (Interpretation of treaties)

*General commentary to section 3*

*The general commentary to section 3 was approved.*

*Section 3 was adopted.*

SECTION 4 (Treaties and third States or third organizations)

*General commentary to section 4*

*The general commentary to section 4 was approved.*

*Commentary to article 34* (General rule regarding third States and third organizations)

32. Mr. McCAFFREY, referring to the English text, proposed that in the first sentence the word "consensualism" should be replaced by the word "consensus-ality".

*It was so decided.*

*The commentary to article 34, as amended, was approved.*

*Commentary to article 35* (Treaties providing for obligations for third States or third organizations)

*The commentary to article 35 was approved.*

*Commentary to article 36* (Treaties providing for rights for third States or third organizations)

33. Mr. KOROMA said that he had doubts about the main proposition of the last sentence of paragraph 1 of article 36, namely: "Its assent shall be presumed so long as the contrary is not indicated ...". He reserved the right to revert to the matter later.

*The commentary to article 36 was approved.*

*Commentary to article 36 bis* (Obligations and rights arising for States members of an international organization from a treaty to which it is a party)

Paragraph (1)

*Paragraph (1) was approved.*

Paragraph (2)

34. Mr. REUTER (Special Rapporteur), referring to the English text, said that the first sentence did not reflect his intent. What he had had in mind was the situation where there was, first, a relation between States members of an international organization deriving from its constituent instrument; secondly, a treaty between that organization and other States; and thirdly, certain relations between the States members of that organization and the parties to the treaty, including those parties to the treaty which were members of the

organization in question. The word “each” in the English text should therefore be deleted, since it was not necessarily each treaty that involved the organization and its member States.

35. Sir Ian SINCLAIR said that, in his view, the problem with the English version arose because the words “*d’une manière distincte*”, which could be related to the word “each”, had not been translated. He therefore suggested that in the English text the phrase “each involving an international organization” should be amended to read “each involving in a distinctive manner an international organization”.

*It was so decided.*

36. Mr. MAHIOU, also referring to the first sentence, asked whether it would not be best to replace the words “several treaties” by the words “two or more treaties”.

37. Mr. REUTER (Special Rapporteur) said that he preferred the existing wording; there would of course be at least two treaties—the original treaty and the constituent instrument of the organization—but, in some cases, there might also be a third treaty between the members of the international organization concerned and its partners which were parties to the original treaty.

38. Mr. USHAKOV, referring to the second sentence of paragraph 2, said that the expression “run by an international organization” did not seem particularly apt for a customs union.

39. Mr. REUTER (Special Rapporteur) suggested that, in order to meet that point, the expression in question should be amended to read “in the case where it takes the form of an international organization”.

*It was so decided.*

*Paragraph (2), as amended, was approved.*

Paragraph (3)

*Paragraph (3) was approved.*

Paragraph (4)

40. Mr. CALERO RODRIGUES proposed that in the English text the words “from a number of” should be replaced by the words “from the following”.

*It was so decided.*

*Paragraph (4), as amended, was approved.*

Paragraphs (5) to (7)

*Paragraphs (5) to (7) were approved.*

Paragraph (8)

41. Mr. McCAFFREY, supported by Sir Ian SINCLAIR, proposed that in the first sentence the word “third” should be deleted; read in conjunction with the last part of the concluding sentence of paragraph 7, it was confusing.

42. Mr. USHAKOV proposed that the words “third States” should be replaced by wording indicating that

the States concerned were not parties to the treaty in question.

43. Mr. SUCHARITKUL agreed with Mr. Ushakov and proposed that the same change should be made in the last line of paragraph (7).

44. The CHAIRMAN suggested that the Special Rapporteur should be invited to redraft the first sentence of paragraph (8) in the light of the comments made.

*It was so decided.*

45. Mr. MAHIOU pointed out that the fourth sentence of paragraph (8) should be amended in the same way as the second sentence of paragraph (2).

46. Mr. REUTER (Special Rapporteur) agreed. He suggested that the words “that manages a customs union” should be replaced by the words “that has been given its form by a customs union”.

*It was so decided.*

*Paragraph (8), as amended, was approved.*

Paragraphs (9) to (17)

*Paragraphs (9) to (17) were approved.*

*The commentary to article 36 bis, as amended, was approved.*

*Commentary to article 37 (Revocation or modification of obligations or rights of third States or third organizations)*

*The commentary to article 37 was approved.*

*The meeting rose at 6 p.m.*

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## 1749th MEETING

*Tuesday, 20 July 1982, at 10.05 a.m.*

*Chairman: Mr. Leonardo DÍAZ GONZÁLEZ  
later: Mr. Paul REUTER*

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### **Draft report of the Commission on the work of its thirty-fourth session (continued)**

**CHAPTER II. Question of treaties concluded between States and international organizations or between two or more international organizations (continued)** (A/CN.4/L.344 and Add.1-6)

**C. Draft articles on the law of treaties between States and international organizations or between international organizations (continued)** (A/CN.4/L.344 and Add.1-5)

1. The CHAIRMAN invited the members of the Commission to limit their observations to points of substance.