

Document:-
A/CN.4/SR.1254

Summary record of the 1254th meeting

Topic:
Filling of casual vacancies

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*Downloaded from the web site of the International Law Commission
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public undertakings had some very controversial aspects, and it would be preferable not to refer to it in the article. On the other hand, the Commission should take a position on the question of principle after considering the basis of the rule it was going to state. The reason why the rule existed was, in his opinion, that for practical reasons international law wished to treat the activity of the State—its essential, not its subsidiary activity—as a unity. Consequently, it was the standpoint of international law, not that of internal law, that had to be defined, and one could speak in terms of “functions” as the Special Rapporteur himself had done. If the text referred to “organs”, it would have to specify that the term meant only certain entities which were not State entities, but had a structure which gave them a public law régime. However, the notions of public law and private law existed only in some systems of law and were meaningless for the Anglo-Saxon countries. The Commission should therefore avoid the term “organ” and any other expression which, like “public corporation”, might suggest that a *renvoi* to internal law was intended. There were, moreover, cases in which a private organ was manifestly concerned, but a private organ which performed State functions—a situation corresponding exactly to the definition of the corporative State. He considered the term “functions” used by the Special Rapporteur acceptable, provided it was explained that it referred to the specific functions of the State.

26. Personally, he would prefer yet another expression to be used, namely, “prerogatives of public power” (*privilèges de puissance publique*). For where an entity that was not a State entity—whatever its status—exercised prerogatives of public power, in other words, where it exercised juridical, legislative, judicial, executive, physical or other compulsion, the State might be said to have split up. Thus he accepted the idea underlying Mr. Kearney’s statement, though he was categorically opposed to any reference to immunities in the article itself. It should be noted that legal acts of a commercial nature, such as acts of exchange or sale, were never attributable to the State, even if carried out by a State body. By contrast, in the case of issuing banks, for example, regardless of their internal status—whether they were private companies or State bodies—the issuing of currency was a regalian privilege, so that in international law the acts of issuing banks in monetary matters could be attributed to the State, as was clear, moreover, from the cases concerning succession of States in monetary matters.

27. In conclusion, he accepted the principle stated in article 7, but would like the drafting to be made more precise. Like Mr. Calle y Calle, he thought it would be preferable to mention the territorial entities first, since they raised the fewest problems.

The meeting rose at 11.50 a.m.

1254th MEETING

Thursday, 9 May 1974, at 12.25 p.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Yasseen.

Filling of casual vacancies on the Commission

(A/CN.4/276 and Add.1)

[Item 1 of the agenda]

The CHAIRMAN announced that at a private meeting the Commission, in conformity with its Statute, had elected Mr. Milan Šahović of Yugoslavia, to fill the vacancy caused by the death of Mr. Milan Bartoš. A telegram had been sent to Mr. Šahović inviting him to take part in the Commission’s proceedings.

The meeting rose at 12.30 p.m.

1255th MEETING

Friday, 10 May 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov.

State responsibility

(A/CN.4/246 and Add.1-3; A/CN.4/264 and Add.1; A/9010/Rev.1)

[Item 3 of the agenda]

(resumed from the 1253rd meeting)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 7 (Attribution to the State, as a subject of international law, of acts of organs of public institutions separate from the State) (*continued*).

1. Mr. TSURUOKA said he thought that draft article 7 was useful, even indispensable; he approved of the principle it stated, in particular where territorial public entities were concerned. As to public corporations and other autonomous public institutions, it might perhaps be desirable to specify the criteria by which their public or private character could be judged. That point was certainly of interest to a country such as Japan, where,