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A/CN.4/SR.1463

Summary record of the 1463rd meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
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cally determined action or omission", which were designed to bring out more clearly the difference between international obligations of conduct and international obligations of result.

21. Mr. USHAKOV suggested that the words "of a State" might be deleted from the title of the article.

22. Mr. AGO (Special Rapporteur) said he had no objection to that suggestion.

23. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to delete the words "of a State" from the title of draft article 20.

It was so agreed.

24. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to approve the title, as amended, and the text of article 20 proposed by the Drafting Committee.

It was so agreed.[3]

The meeting rose at 4.15 p.m.

[3] See also 1469th meeting, paras. 1-5.

1463rd MEETING

Tuesday, 19 July 1977, at 10.05 a.m.

Chairman: Sir Francis VALLAT

Later: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

State responsibility (*continued*) (A/CN.4/302 and Add.1-3)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*) *

ARTICLE 22 (Exhaustion of local remedies)

1. The CHAIRMAN invited the Special Rapporteur to introduce draft article 22, which read:

Article 22. Exhaustion of local remedies

There is a breach of an international obligation requiring the State to achieve a particular result, namely, to accord certain treatment to individuals, natural or legal persons, if, after the State's initial conduct has led to a situation incompatible with the required result, the said individuals have employed and exhausted without success the local remedies which were available to them and which possessed the necessary effectiveness to ensure either that the required treatment would continue to be accorded to them or, if that should prove impossible, that appropriate compensation be awarded to them. Consequently, the international responsibility of the State for the initial act or omission and the possibility of enforcing it against the State are not established until after local remedies have been exhausted without satisfaction.

2. Mr. AGO (Special Rapporteur) said that articles 20 and 21 dealt, respectively, with the international obligations which required a State to adopt a particular course of conduct and with those which only required a State to achieve a particular result, leaving it free to determine the course of conduct by which to do so. In both cases, the State was required to perform or not to perform one or more actions or omissions; the difference was that, in the case of article 20, the required conduct was dictated by international law whereas, in the case of article 21, the initiative rested with the State. Moreover, the international obligations referred to in article 21 could be distinguished according to whether, in addition to being able to choose at the outset one means rather than another, the State did or did not have the faculty of rectifying, by a new course of conduct, the situation created by an initial inadequate course of conduct. If it had that faculty, there was no definitive breach of the international obligation until there had been a definitive failure to achieve the result, even in that exceptional manner. Sometimes, as had been seen, the obligation was so permissive that, when the originally required result was no longer attainable, the State could none the less discharge its obligation by achieving an equivalent result. That showed therefore how the way in which an international obligation was breached depended on the nature of the obligation itself.

3. Account should also be taken of a large and special category of international obligations: those assumed by States concerning the treatment of private individuals, particularly foreigners. When the result required by an international obligation was a certain kind of treatment for individuals, it was normal for the individuals concerned to co-operate in achieving that result, either by making an appropriate request at the outset or, if the obligation also allowed the State to rectify a situation which had been created by its initial conduct and which was incompatible with that required by the international obligation, by setting the necessary machinery in motion to remedy the unsatisfactory situation. For example, in the case of a conventional or customary international obligation providing for equality of treatment of nationals and foreigners in regard to the practice of a particular profession, if an authority of the State did not allow a foreigner to benefit from such equality of treatment, it was naturally incumbent on the foreigner to take the initiative to have the decision of that authority reversed by a higher administrative authority or by a judicial organ. The State itself could not be asked to take the initiative in every case, and that was how the principle of the exhaustion of local remedies had come into being.

4. On the other hand, when the beneficiary of an international obligation was a State and the obligation allowed it to remedy the effects of an inadequate initial course of

* Resumed from the 1461st meeting.

conduct, it was naturally for that State to take the initiative by adopting different conduct to rectify the initial conduct. That was the case covered by article 21, paragraph 2, and not by article 22.

5. When an authority did not accord internationally required treatment to individuals and they appealed to a higher authority, the latter authority could rectify the situation by according them the desired treatment or by requesting the lower authority to do so. In that case, there was no breach of the international obligation because it required only the achievement of a result, namely, that certain treatment should be accorded *in concreto* to the individuals in question. If, on the other hand, the higher authority confirmed the decision of the lower authority and it thus became definitely impossible to achieve the required result, there was a breach of the international obligation and the State incurred international responsibility, since all the means available to it had not produced the desired result. Where, however, the individuals concerned, whether natural or legal persons, had themselves failed to set the necessary machinery in motion, the State could not, of course, be blamed for lack of diligence. It might happen, indeed, that individuals had little interest in rectifying the situation or allowed themselves to be barred by negligence. In that case, the further condition requiring the co-operation of the individuals, in other words, the exhaustion of local remedies, was not fulfilled.

6. The rule of exhaustion of local remedies had given rise to much controversy as to its origin—whether customary or conventional—and as to its nature—whether substantive or procedural. He believed it to be a very old rule, which had come into being at the same time as those designed to ensure certain treatment for foreigners. The question of exhaustion of local remedies must have arisen on the day when, for the first time, an individual established in a country other than his own had been the victim, in that country, of treatment different from that to which an international obligation entitled him.

7. The dispute as to the nature of the rule had arisen basically because the problem had been wrongly stated. Those who considered it to be a procedural rule invoked the fact that it was provided for in treaties where it entailed the consequence that a State could not intervene by giving diplomatic protection to its nationals or institute proceedings on their behalf before an arbitral tribunal or the International Court of Justice so long as the individuals concerned had not exhausted local remedies. But common sense compelled recognition that the exhaustion of local remedies, as a customary rule of very long standing, could not be a procedural rule applying only to the exercise of diplomatic protection or, still less, to the institution of proceedings before an international tribunal, since international tribunals all had their origin in treaties; there was no international jurisdiction established by custom. It was clear that the principle itself, which expressed a basic condition for the existence of a breach of an international obligation, had been confused with its corollary, which concerned the possibility of establishing responsibility for the breach.

8. The principle of the exhaustion of local remedies did, in fact, comprise a main proposition and a corollary. The main proposition was that there was no breach of an international obligation of the type referred to, and therefore no international responsibility so long as a special condition had not been fulfilled, that condition being exhaustion by the individuals concerned of the remedies offered by the internal legal system. The corollary was that a State could not institute proceedings to establish responsibility for the breach of the obligation in question so long as the special condition for the generation of responsibility had not been fulfilled, that condition being exhaustion by the individuals concerned of the local remedies which could lead to the result required by the international obligation. In other words, it was only because responsibility was not generated until the moment when the required result could obviously no longer be attained that the international responsibility of a State could be engaged only when the individuals concerned had exhausted local remedies.

9. The raison d'être of the principle in question had its origin in the natural logic of certain international obligations. To breach an international obligation was to impair a subjective right. The existence for a State of an international obligation "of result" towards another State meant that the latter had the subjective right to demand that the former should achieve the result required by the obligation. A breach by the former State of its obligation amounted to impairment of the subjective right of the latter State. Thus, if the subjective right in question was impaired, a new international subjective right emerged for that State: the right to demand compensation for the impairment of the right it had previously possessed. There were no suspended subjective rights. It was inconceivable that, in order to assert a subjective right which it already possessed, a State should have to wait until an individual had obtained a decision by a domestic court on an appeal he had lodged. If the State could not act with a view to exercising its new subjective right, it was because that right did not, for the time being, yet exist—because, so long as there was still a possibility that, on the individual's appeal, the result required by the original subjective right might be achieved, the State still did not, as was only logical, have any new rights deriving from the impairment of its original right. That impairment was not yet complete.

10. There was some confusion in the works of learned writers. Borchard, who had been one of the first to study the matter, had well understood the two aspects of the principle. Subsequently, some writers had espoused his views, while others had favoured the idea that the condition of the exhaustion of local remedies was established by a purely procedural rule and yet others had recognized both a substantive and a procedural aspect of the principle. Some writers, who had first maintained that it was a procedural rule, had subsequently realized that they had considered only the logical consequence of the substantive aspect of the rule. He had referred only to a selection of writers in paragraph 54 of his sixth report (A/CN.4/302 and Add.1-3), and some other recent studies had since been brought to his attention. In any event, the Commission was not called upon to enter into a doctrinal controversy, but to seek confirmation of the existence and the meaning of the principle of the exhaustion of

local remedies in State practice and international case law.

11. Before proceeding to that analysis, it would be well to draw attention once again to one essential aspect. To affirm that the principle in question precluded application to an international tribunal so long as local remedies had not been exhausted was not to deny that it was above all a decisive factor in the breach of an international obligation and, consequently, in the generation of international responsibility. International tribunals often had to consider the question of the exhaustion of local remedies in dealing with the question of the admissibility of proceedings, for it was not uncommon for the respondent State to raise an objection as to admissibility based on the principle of the exhaustion of local remedies. In so doing, however, the State was merely asserting the corollary to the principle—which was the only matter of concern to it at the time—and the tribunal necessarily did the same. To be able to deny that the principle had both a substantive and a procedural aspect, it would be necessary to find, in judicial decisions, the affirmation that it related solely to procedure, to the exclusion of any effect on the existence of international responsibility.

12. As to State practice, reference should, as usual, first be made to the Conference for the Codification of International Law (The Hague, 1930). The replies to the request for information addressed to Governments by the Preparatory Committee for that Conference had not been very clear about the matter under consideration, but some had clearly indicated that international responsibility arose only after local remedies had been exhausted without satisfaction. The United Kingdom alone had referred only to the procedural aspects of the principle, but it should be noted that subsequently, on other occasions, it had taken a different position. At the Conference itself, the opinions expressed had revealed several trends. Many delegations—in particular, the Romanian delegation, whose very clear and precise statement was reproduced in paragraph 55 of his report—considered the exhaustion of local remedies to be a condition for the generation of responsibility. A few other delegations, such as that of Italy, had expressed a contrary, albeit much less definite, view. The delegations of the United States and Norway had stated that the exhaustion of local remedies was sometimes a condition for responsibility and sometimes a condition for the possibility of establishing it. Thus, no clear and final conclusion had emerged from the Conference, but it could be said that the majority of delegations had considered that international responsibility arose only after individuals had exhausted local remedies.

13. It was interesting to note that the Governments of the United States and Norway had expressly stated that the exhaustion of local remedies gave rise to responsibility if the internationally wrongful act related to the administration of justice in regard to foreigners. In that sphere, however, it was usual for several organs to intervene successively, so that the administration of justice was normally not limited to the action of the first organ. Moreover, to assert that, where the administration of justice was concerned, there was no final breach of an international obligation so long as a higher court could still undo what a lower court had done obviously amounted to establishing a general principle that was valid outside that particular sphere. He therefore believed that the United States and Norwegian replies confirmed that the principle of the exhaustion of local remedies certainly had consequences at the procedural level but that, above all, it determined the existence of a breach of the obligation and the generation of responsibility.

14. With regard to international diplomatic and judicial practice, he first stressed the need to take account of the circumstances of each particular case. It was always necessary to inquire whether a State had affirmed the principle only when challenging the admissibility of proceedings brought against it, for it was then obvious that it was asserting only the procedural aspect of the principle, not the substantive aspect. It should also be noted that international tribunals, when considering a preliminary objection relating to admissibility, must refrain from examining the substance of the case before them. It would therefore be wrong to consider the views expressed on such occasions as a rejection of the substantive aspects of the principle.

15. He then referred to the parts of his report in which he had analysed some examples of international practice with a view to drawing conclusions. In its decision No. 21 of February 1930, the Great Britain-Mexico Claims Commission had stated that "the responsibility of the State under international law can only commence when the persons concerned have availed themselves of all remedies open to them under the national laws of the State in question".[1] In the *Administration of the Prince von Pless* case, referred to the Permanent Court of International Justice,[2] both the Polish and the German Governments had recognized that there could be no question of international responsibility of a State so long as the local remedies had not been exhausted. In the *Finnish Vessels Arbitration* case,[3] the arbitrator had succeeded in maintaining a sort of neutrality between the two ways of approaching the requirement of exhaustion of local remedies to which he had referred, but he had brought out one essential point: the parties must in fact have exhausted local remedies with the intention of winning their case. The condition of exhaustion of local remedies was not a mere formality, and it was not enough for individuals to appeal for the sake of form, reserving certain weighty arguments for a future international proceeding. *The Phosphates in Morocco* case [4] between Italy and France, which had been heard by the Permanent Court of International Justice, was not very instructive either for the purposes of the question covered by article 22. The European Commission of Human Rights, on the other hand, had stated a principle of general application when it had affirmed that the responsibility of a State arose only at the moment when local remedies had been exhausted.[5]

[1] See A/CN.4/302 and Add.1-3, para. 63.

[2] *Ibid.*, para. 64.

[3] *Ibid.*, para. 65.

[4] *Ibid.*, paras. 66-69.

[5] *Ibid.*, para. 71.

16. Lastly, he drew attention to the separate or dissenting opinions of several judges of the International Court of Justice and the Court which had preceded it.[6]

17. He concluded from the foregoing analysis that all the really clear and positive indications of practice and case law, as well as the separate opinions of distinguished judges, led to the same result: there was no breach of an international obligation or generation of responsibility so long as remedies were still available to the parties at the internal legal level, by which the State could produce the internationally required result.

Mr. Sette Câmara, first Vice-Chairman, took the Chair.

18. The question arose whether or not the principle that the exhaustion of local remedies was a supplementary condition for the breach of an obligation of result when the result required consisted in ensuring that foreigners would be treated in a particular way was a principle of general international law.

19. Some recent writers had maintained that the principle of exhaustion of local remedies was a purely conventional principle; not being in favour of it, they had endeavoured to limit its scope by reducing it to a purely procedural principle established by certain international conventions. However, that was an isolated theoretical opinion, and the great majority of writers considered that the principle of the exhaustion of local remedies was a general principle of international law, which was, moreover, only the logical consequence of the nature of certain international obligations.

20. International jurisprudence came close to legal theory on that point. The judgments or decisions pronounced in such cases as the *Mavrommatis Palestine Concessions* case (1924), the *Panevezys-Saldutiskis Railway* case (1939), the *Interhandel* case (1959), the *British Property in Spanish Morocco* case (1925), the *Mexican Union Railway* case (1930), the *Ambatielos* case (1956) and the *German External Debts* case (1958) [7] recognized without exception that the principle of the exhaustion of local remedies was a well-established rule of general international law.

21. That position was confirmed by the practice of States, which were unanimous in recognizing the general character of the principle of the exhaustion of local remedies, as was shown by the positions taken by Governments in the disputes referred to the International Court of Justice. The Polish Government in the *Administration of the Prince von Pless* case, the Yugoslav and Swiss Governments in the *Losinger* case, the French and Italian Governments in the *Phosphates in Morocco* case, the Lithuanian and Estonian Governments in the *Panevezys-Saldutiskis* case, the Iranian and British Governments in the *Anglo-Iranian Oil Company* case, the United States and Swiss Governments in the *Interhandel* case, the Bulgarian Government and the United States and Israeli Governments in the *Aerial Incident of 27 July 1955* case [8] had all recognized the existence of that principle as a rule of general international law.

22. The positions taken by Governments parties to disputes referred to other international tribunals were equally conclusive. The Bulgarian and Greek Government in the *Central Rhodope Forests* case, the British and Iranian Governments in the *Anglo-Iranian Oil Company* case, and the Finnish and British Governments in the *Finnish Vessels Arbitration* case [9] had all recognized that the principle of the exhaustion of local remedies was an undisputed principle of general international law.

23. It had been said that the principle had come into being with the development of rules which imposed obligations on the State in regard to the treatment of foreigners. However, the question arose whether there was a risk of going both too far and not far enough if the application of the principle was generally linked to the breach of obligations concerning the treatment of foreigners: too far, because it might be asked whether international law itself did not provide for exceptions to the applicability of the principle to the treatment of foreign natural or legal persons; not far enough, because it might also be asked whether the rule of the exhaustion of local remedies should not be extended to other subjects, in particular to natural or legal persons who were nationals of the obligated State.

24. He stressed that the question arose solely in connexion with general international law. It was true that international conventions sometimes restricted the principle of the exhaustion of local remedies or extended it to other spheres or provided for special arbitration procedures designed to take the place, in certain particular cases, of the normal system of internal legal proceedings, thus limiting the scope of application of the principle. But such conventional limitations were not within the competence of the Commission, which must only concern itself with the application of the principle of the exhaustion of local remedies as received in general international law.

25. The principle of the exhaustion of local remedies had its origin in the commonest case—that in which the obligation imposed on the State required it to accord certain treatment to foreign nationals in regard to an activity carried on in its territory. It might, however, be asked whether that principle applied when the breach of the obligation occurred outside the territory of the State, for example, on the high seas. That possibility was, in fact, rather limited since it was not certain that local remedies always existed in such cases. Where such remedies did exist, however, he did not see why the principle concerning their exhaustion should not apply.

26. It might also be asked whether the principle of the exhaustion of local remedies as a condition to be met applied to foreigners who were not resident in the territory of the State. Again, he saw no reason for not applying the principle in that case, since the fact that the foreigner was or was not resident in no way changed the obligation of the State concerning the treatment of that person. It was also obvious that, if the injured person usually resided very far from the country in question and consequently could not comply with the time-limits for the institution of proceedings, the condition would not apply in that

[6] *Ibid.*, paras. 73-75.

[7] *Ibid.*, para. 84.

[8] *Ibid.*, para. 87.

[9] *Ibid.*, para. 88.

particular case since the remedies must be adequate and effective. But the effectiveness of remedies must be judged in each particular case. Thus, it was preferable not to introduce into the general statement of the principle in article 22 detailed exceptions designed to take account of all the special cases that might arise, but to leave it to international jurisprudence to settle those cases as and when they arose.

27. Where the injury caused to a foreigner was the result of open animosity or of a discriminatory intent on the part of the State against the nationals of a particular country, it was again the principle of the adequacy and effectiveness of local remedies that applied, for, if exhaustion of local remedies was not required in such a case, it was because those remedies would clearly not be effective.

28. Where the injured person had no voluntary link with the State whose remedies had to be used—for instance, in the case of the El Al aircraft shot down by Bulgarian anti-aircraft fire because it had entered Bulgarian air-space by mistake, or where injury was caused to a foreigner brought into the territory of a State against his will, or in transit through it by air or land—the problem that arose was once again that of the real availability of effective local remedies. It should be clearly indicated in the text or in the commentary that that meant the real possibility of using such remedies. But the draft article should not contain a list of exceptions to the general principle of the exhaustion of local remedies, and it should be left to treaty law to specify, when States judged it necessary, the conditions in which that principle must or must not apply.

29. It might also be asked whether application of the principle of the exhaustion of local remedies should not be extended to spheres other than that of the treatment of foreign individuals. He emphasized that there could be no question of extending the principle to cases of injury suffered by foreigners acting in a country as organs of the State of which they were nationals. It was true that, in its resolution of 1956,[10] the Institute of International Law had declared, rather casually, that an exception should be made to the rule of exhaustion of local remedies for foreigners enjoying special international protection in a country, in other words, primarily for diplomatic and consular agents. Diplomatic and consular agents were not, however, private individuals; they were organs of the State they represented. The rule of exhaustion of local remedies could not then apply to them when they suffered injury in the performance of their duties; it could apply only if they suffered injury while acting as private individuals. Although their immunity from jurisdiction prevented them from being defendants, it did not prevent them from being plaintiffs.

30. He did not think that an exception to the rule of exhaustion of local remedies should be made in the case of a foreign private company with public capital participation, since what mattered was not the more or less public character attributed to the legal person by the legal system to which it belonged, but the kind of activity it carried on in foreign territory. There was no reason why the condition of the exhaustion of local remedies should not be applied even to a foreign company financed mainly by public capital if it acted as a purely private person in the territory of the State.

31. In fact, therefore, the question of a possible extension of the rule of exhaustion of local remedies arose only in regard to a category of private persons with whom international law was becoming increasingly concerned and who were nationals of the State itself. That was a limited problem because, despite the growing importance they were assuming, the rules relating to the treatment of nationals were almost exclusively rules of treaty law. The question to be decided was whether the principle of the exhaustion of local remedies, hitherto limited only to foreigners, should also be applied to nationals when the State had an international obligation relating to their treatment. If it was a treaty obligation, the treaty would usually provide the answer to that question. Should the principle of the exhaustion of local remedies nevertheless be established to provide for the possibility that a customary rule might be established on the subject? Should the principle therefore be applied to all individuals—foreigners and nationals—or should cases concerning the treatment of nationals be excluded on the ground that they were fully covered by treaty law? If the second solution was adopted, a problem might arise if an international convention for the protection of human rights did not expressly stipulate the prior exhaustion of local remedies. That condition would then apply to foreigners, but not to nationals. He had therefore considered it advisable to include in the rule stated in article 22 the case of a breach by the State of an international obligation concerning the treatment of its own nationals, but it was for the Commission to decide whether provision for that case should be retained.

32. The real raison d'être of the principle of the exhaustion of local remedies was to enable the State to avoid the breach of an international obligation by rectifying, through subsequent conduct adopted on the initiative of the individuals concerned, the consequences of an initial course of conduct contrary to the result required by the obligation. If the injured person had failed to exhaust the remedies available to him, there was negligence on his part and no breach occurred.

33. The mere fact that remedies existed, however, did not mean that the injured persons were obliged to use them. The forms of remedy varied considerably from one legal system to another and their use should not be assessed in the abstract but, in each specific case, by the criterion of effectiveness.

34. It could be concluded, first, that, in principle, all available remedies capable of rectifying the situation complained of must be used and that all appropriate legal grounds for securing a favourable decision must be invoked; and, secondly, that a remedy should be used only if it held out real prospects of success and if the success to which it might lead was not merely a matter of form, but could actually produce the result originally required by the international obligation or, if that was no longer possible, a truly equivalent alternative result.

[10] *Yearbook ... 1969*, vol. II, p. 142, document A/CN.4/217 and Add.1, annex IV.

35. Lastly, it might be asked whether the principle of the exhaustion of local remedies should be maintained in general international law in its existing form. That principle, which followed logically from the nature and purpose of certain international obligations, did not have only advantages. Practice showed that it sometimes also had disadvantages, particularly that of a long delay before action could be taken at the international level. Some investing States were justifiably concerned about the serious prejudice that might be suffered by those of their nationals who carried on activities in a foreign State and whose capital, skills and work benefited the economy of that State. But, in fact, means of avoiding such prejudice were available to those States, since treaty law provided for systems (global compensation, arbitration, etc.) which were designed precisely to overcome the most serious disadvantages of the application of the principle of the exhaustion of local remedies.

36. On the other hand, it would be wrong to ignore the concern of the countries invested in, which had often been subjected to excessive pressure in the past to make them transfer directly to the international level matters which should and could have been settled at the internal level. It was to the advantage of those States to settle certain questions internally if they wished to avoid having to appear before an international tribunal to be tried for a breach which they could have avoided through the action of their own domestic courts.

37. It was therefore necessary to establish a balance between points which, more than points of law, were above all points of justice. For justice required that individuals who carried on an activity in a foreign State should be protected because that activity was supposed to benefit the State in whose territory it was carried on. But justice also required that the States in which foreign individuals carried on their activities should be protected —especially if those individuals were nationals of powerful States—against attempts to transform into international cases matters which had at first been purely internal and should remain so.

38. He therefore believed that there was no reason to depart from existing international law for the sake of an alleged progressive development which would be unacceptable to a large proportion of States and which they might regard as detracting from respect for their sovereignty, independence and sovereign equality. The rule stated in article 22 should define the principle of the exhaustion of local remedies as it was in the present state of international law, formulating it flexibly enough to be adaptable to the different situations that arose in practice.

The meeting rose at 1 p.m.

1464th MEETING

Wednesday, 20 July 1977, at 10.05 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta

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Draft report of the Commission on the work of its twenty-ninth session

1. The CHAIRMAN invited the Commission to consider the draft report on the work of its twenty-ninth session, paragraph by paragraph, beginning with chapter IV.

CHAPTER IV. Question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/L.261 and Corr.1 and Add.1-2)

A. Introduction (A/CN.4/L.261)

Paragraph 1

Paragraph 1 was approved.

Paragraph 2

2. The CHAIRMAN suggested that in the first sentence, the words "at least in part", which were somewhat deprecatory, should be replaced by the words "in large measure".

It was so agreed.

Paragraph 2, as amended, was approved.

Paragraph 3

3. In reply to a question put by Mr. ŠAHOVIĆ, Mr. REUTER (Special Rapporteur) reminded the Commission that it had been decided not to change the numbering of the articles on first reading in order to keep them in line with the articles of the Vienna Convention on the Law of Treaties.

Paragraph 3 was approved.

Paragraph 4

Paragraph 4 was approved.

Paragraph 5

4. The CHAIRMAN suggested that, in the penultimate sentence of the English text, the words "at the cost of" should be replaced by the word "by".

It was so agreed.

Paragraph 5, as amended, was approved.

Paragraphs 6-14

Paragraphs 6-14 were approved

Paragraph 15

5. The CHAIRMAN suggested that, at the end of the paragraph, the words "owing to lack of time" should be replaced by the words "in the time available".

It was so agreed.

Paragraph 15, as amended, was approved.

Section A as a whole, as amended, was approved.