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**A/CN.4/SR.1576**

**Summary record of the 1576th meeting**

Topic:  
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Extract from the Yearbook of the International Law Commission:-  
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cussion would do much to assist him in achieving a balanced approach to the topic of jurisdictional immunities of States and their property. He had taken due note that the consensus of opinion in the Commission appeared to be that he should continue along the lines proposed in his report, while concentrating at the outset on general principles.

42. With regard to exceptions to the general rules on State immunity, he reiterated that the purpose of his preliminary report was simply to identify the issues involved and to draw attention to certain exceptions. Those exceptions had in fact been derived from the practice of certain States, although he recognized that they might attract a different response in other parts of the world.

43. The reaction to his proposals regarding source materials had been generally favourable. In particular, he was grateful for having his attention drawn to the question of treaties, which he would certainly examine more closely, as it could provide a pointer for a balanced approach that was acceptable to all States.

44. Allied to the general question of principle was the question of priorities, in regard to which he agreed that it was necessary to concentrate first on immunity from jurisdiction and to leave aside, for the time being, the question of immunity from execution. He had been pleased to hear that Mr. Ushakov agreed that the term "jurisdictional immunities" was not confined to the exercise of judicial power but extended to exemptions from the exercise of other kinds of power, including that of the executive, administration and legislature. That common ground afforded a basis on which the Commission could proceed.

45. With regard to the scope of the subject, and in particular to the relationship between international law and other areas of law, it was clear that source material came in the main from internal law, since the question was essentially one that fell within the jurisdiction of the municipal courts and of the executive branch of the State. Consequently, even private international law operated as a branch of internal law, because what was at issue was a choice of law and of jurisdiction. Mr. Reuter had rightly urged the need for care to be exercised in distinguishing between cases in which there was immunity and cases in which there was no jurisdiction under the applicable rules of private international law.

46. A note of warning had likewise been sounded by certain members, to the effect that the Commission should not delve too deeply into private international law. His point in that connexion had simply been that, with regard to immovable property, and particularly to land, State practice was virtually uniform in applying the law of the State in which the immovable property was situated, since a question of territorial sovereignty was involved. He had taken note of the suggestion that certain procedural questions, such as the incidence of costs, security for costs and service of writs, required examination, and would consider those matters more closely in due course. He agreed that the doctrine of act of State should be eschewed for the

purposes of the study, and also that it was possible for a State to conclude contracts in private law that did not fall within the purview of the law of treaties. However, he had mentioned the latter point merely to indicate that it should be disregarded for the time being.

47. A fundamental concept was the duties and functions of the State, which differed according to the country concerned. The political and economic developments taking place in the world, particularly in developing countries, might well have an impact on the progressive development of law, although precisely what form it would take was not known.

48. Lastly, he agreed that a questionnaire would be useful, and thought the Commission would be assisted in its further work if the Secretariat could make a compilation of existing legislative material on immunity.

49. Sir Francis VALLAT urged that, to spare Governments unnecessary or repetitive work, any questionnaire circulated should be as specific and comprehensive as possible.

*The meeting rose at 1 p.m.*

## 1576th MEETING

*Wednesday, 25 July 1979, at 10.10 a.m.*

*Chairman:* Mr. Milan ŠAHOVIĆ

*Members present:* Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

**Question of treaties concluded between States and international organizations or between two or more international organization (*concluded*)\* (A/CN.4/312,<sup>1</sup> A/CN.4/319, A/CN.4/L.300)**

[Item 4 of the agenda]

DRAFT ARTICLES PROPOSED BY THE  
DRAFTING COMMITTEE

ARTICLES 39-60

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Committee's report on draft articles 39 to 60 on treaties concluded

\* Resumed from the 1559th meeting.

<sup>1</sup> Yearbook... 1978, vol. II (Part One).

between States and international organizations or between two or more international organizations, which had been referred to it for consideration.

2. The text of draft articles 39 to 60 and the titles of parts IV and V, and of sections 1, 2 and 3 of the latter, as proposed by the Drafting Committee (A/CN.4/L.300), read:

#### PART IV

##### AMENDMENT AND MODIFICATION OF TREATIES

###### *Article 39. General rule regarding the amendment of treaties*

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

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

###### *Articles 40. Amendment of multilateral treaties*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### PART V

##### INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

###### SECTION 1. GENERAL PROVISIONS

###### *Article 42. Validity and continuance in force of treaties*

1. The validity of a treaty between two or more international organizations or of the consent of an international organization to be bound by such a treaty may be impeached only through the application of the present draft articles.

2. The validity of a treaty between one or more States and one or more international organizations or of the consent of a State or an international organization to be bound by such a treaty may be impeached only through the application of the present draft articles.

3. The termination of a treaty, its denunciation or the withdrawal of a party may take place only as a result of the application of the provisions of the treaty or of the present draft articles. The same rule applies to suspension of the operation of a treaty.

###### *Article 43. Obligations imposed by international law independently of a treaty*

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it or the suspension of its operation, as a result of the application of the present articles or of the provisions of the treaty, shall not in any way impair the duty of any international organization or, as the case may be, of any State or any international organization to fulfil any obligation embodied in the treaty to which that State or that organization would be subject under international law independently of the treaty.

###### *Article 44. Separability of treaty provisions*

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty, may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present articles may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

(a) the said clauses are separable from the remainder of the treaty with regard to their application;

(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50, the State or the international organization entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

###### *Article 45. Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty*

1. A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a

treaty between one or more States and one or more international organizations under articles 46 to 50 or articles 60 and [62] if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

2. An international organization may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and [62] if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having renounced the right to invoke that ground.

3. The agreement and conduct provided for in paragraph 2 shall be governed by the relevant rules of the organization.

## SECTION 2. INVALIDITY OF TREATIES

### *Article 46. Violation of provisions regarding competence to conclude treaties*

1. A State may not invoke the fact that its consent to be bound by a treaty between one or more States and one or more international organizations has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. In the case referred to in paragraph 1, a violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

3. An international organization may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of the rules of the organization regarding competence to conclude treaties as invalidating its consent unless that violation was manifest.

4. In the case referred to in paragraph 3, a violation is manifest if it is or ought to be within the cognizance of any contracting State or any other contracting organization.

### *Article 47. Specific restrictions on authority to express or communicate consent to be bound by a treaty*

1. If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States and negotiating organizations prior to his expressing such consent.

2. If the authority of a representative to communicate the consent of an international organization to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent communicated by him unless the restriction was notified to the other negotiating organizations or to the negotiating States and other negotiating organizations or to the negotiating States, as the case may be, prior to his expressing such consent.

### *Article 48. Error*

1. A State or an international organization may invoke an error in a treaty as invalidating its consent to be bound by the treaty if

the error relates to a fact or situation which was assumed by that State or that organization to exist at the time when the treaty was concluded and formed an essential basis of the consent of that State or that organization to be bound by the treaty.

2. Paragraph 1 shall not apply if the State or international organization in question contributed by its own conduct to the error or if the circumstances were such as to put that State or organization on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; [article 79] then applies.

### *Article 49. Fraud*

If a State or an international organization has been induced to conclude a treaty by the fraudulent conduct of another negotiating State or negotiating organization, the State or the organization may invoke the fraud as invalidating its consent to be bound by the treaty.

### *Article 50. Corruption of a representative of a State or of an international organization*

If the expression by a State or an international organization of consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State or negotiating organization, the State or organization may invoke such corruption as invalidating its consent to be bound by the treaty.

### *Article 51. Coercion of a representative of a State or of an international organization*

The expression by a State or an international organization of consent to be bound by a treaty which has been procured by the coercion of the representative of that State or that organization through acts or threats directed against him shall be without any legal effect.

### *Article 52. Coercion of a State or of an international organization by the threat or use of force*

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

### *Article 53. Treaties conflicting with a peremptory norm of general international law (jus cogens)*

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present articles, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

## SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

### *Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties*

The termination of a treaty or the withdrawal of a party may take place:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties, after consultation with the other contracting organizations, or with the other contracting States and the other contracting organizations, or with the other contracting States, as the case may be.

**Article 55. Reduction of the parties to a multilateral treaty below the number necessary for its entry into force**

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

**Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal**

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

**Article 57. Suspension of the operation of a treaty under its provisions or by consent of the parties**

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties, after consultation with the other contracting organizations, or with the other contracting States and the other contracting organizations, or with the other contracting States, as the case may be.

**Article 58. Suspension of the operation of a multilateral treaty by agreement between certain of the parties only**

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

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

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

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

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

**Article 59. Termination or suspension of the operation of a treaty implied by conclusion of a later treaty**

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter, and:

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

**Article 60. Termination or suspension of the operation of a treaty as a consequence of its breach**

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it, either:

(i) in the relations between themselves and the defaulting State or international organization, or

(ii) as between all the parties;

(b) a party especially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State or international organization;

(c) any party other than the defaulting State or international organization to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present articles; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

3. Mr. RIPHAGEN (Chairman of the Drafting Committee) reminded members that part IV of the draft articles, comprising articles 39 to 41, had been submitted by the Special Rapporteur, at the twenty-ninth session of the Commission, in his seventh report (A/CN.4/312), and that part V, comprising articles 42 to 60, had been submitted at the current session, in his eighth report (A/CN.4/319).

4. In reviewing those draft articles, the Drafting Committee had borne in mind the need to maintain the relationship with the Vienna Convention on the Law of Treaties.<sup>2</sup> For that reason, and for ease of comparison between the two texts, the draft articles proposed by the Drafting Committee had the same numbering as the corresponding articles of the Vienna Convention. The Drafting Committee had likewise borne in mind that the Commission wished to maintain, as far as possible, the precision and flexibility of wording of the Vienna Convention, while taking account of the special features of the participation of

<sup>2</sup> *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287. The Convention is hereinafter referred to as the "Vienna Convention".

international organizations in treaties. Where appropriate, therefore, the terminology of the corresponding articles of the Vienna Convention had been used. However, to take account of the fact that the draft articles dealt with three different types of treaty, the Drafting Committee had decided to add the words "as the case may be" where necessary, namely, in articles 40, 47, 54 and 57. Furthermore, the phrase "any State or international organization already a party", in paragraph 4 of article 40, had been considered unnecessary in the context, and had therefore been replaced by the words "a party", which appeared elsewhere in that article. To ensure conformity with the definitions in article 2,<sup>3</sup> the word "international" had been deleted from the expression "international organization" wherever that expression referred to a contracting or negotiating organization. Similarly, the word "international" had been added or deleted, as appropriate, throughout the draft, so that the expression "international organization" was used in a particular paragraph or subparagraph only in the first instance, the word "organization" being used thereafter. The square brackets in the Special Rapporteur's draft enclosing references to other articles had been removed wherever the articles had been adopted at the current session. Subject to those minor drafting changes, the Drafting Committee had retained the texts of articles 40, 43, 44 and 47 to 60, which therefore called for no further comment.

5. Turning to the other articles proposed by the Drafting Committee, he said that article 39 consisted of two paragraphs, whereas the article submitted by the Special Rapporteur had consisted of only one, as did the corresponding article of the Vienna Convention. In paragraph 1, the words "by agreement" had been replaced by the words "by the conclusion of an agreement". The latter wording was considered to be more explicit and did not affect the sense of the provision, because of the reference to the rules laid down in part II of the draft. The phrase "except in so far as the treaty may otherwise provide" had been deleted, in view of the doubts expressed by members. The conventional freedom of the parties was safeguarded by the rules laid down in part II of the draft, and was specifically referred to in article 40, so there seemed to be no need to retain that safeguard in article 39 as well. The purpose of the new paragraph 2 was to reaffirm an essential rule regarding the consent of international organizations; no change of substance was involved.

6. For article 41, the Drafting Committee had preferred the second of the two variants proposed by the Special Rapporteur in his seventh report (A/CN.4/312).

7. Article 42 had been amended for the sake of clarity and precision. Paragraph 1 of the original draft had

been divided into two paragraphs, dealing respectively with treaties between two or more international organizations and treaties between one or more States and one or more international organizations, and paragraph 2 of the original draft had accordingly been renumbered as paragraph 3. Paragraph 3 of the original draft, which reserved possible obligations deriving from the United Nations Charter, particularly from Article 103, had been deleted. A similar reservation was made in article 30, paragraph 6. In view of the comments made by members of the Commission, the Drafting Committee had considered that it would be inadvisable, at present, to make the same reservation in other articles where it would be appropriate; it was of course understood that the Commission might wish, at a later stage, to consider the addition of a general article by which the safeguard clause relating to Article 103 of the Charter would be extended to the whole draft.

8. In his eighth report (A/CN.4/319), the Special Rapporteur had submitted two variants for article 45. Variant A made no distinction between the case of a State and that of an international organization and thus did not differ from article 45 of the Vienna Convention, apart from minor drafting changes. Variant B made the case of a State subject to the same rules as those laid down in the Vienna Convention, but treated an international organization differently in regard both to principle and to practice since, under its terms, it would be more difficult for an international organization than for a State to lose the right to invoke certain facts. Paragraph 1, as proposed by the Drafting Committee, which dealt with States, maintained the rule laid down in article 45 of the Vienna Convention, both for express acceptance or agreement (subparagraph (a)) and for acquiescence by conduct (subparagraph (b)). Paragraph 2, which dealt with international organizations, also maintained the Vienna Convention rule for express acceptance or agreement and for the effects of conduct, but the phrase "acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be" had been replaced in subparagraph (b) by the words "renounced the right to invoke that ground". That amendment had been introduced to take account of members' comments on the need to protect the treaty partners of international organizations against the conduct of their organs, and to avoid the impression of passivity and ease that might be given by the concept of acquiescence.

9. With regard to the application of paragraph 2, and in particular subparagraph (b), the Drafting Committee had decided, *ex abundante cautela*, to add a new paragraph 3 restating the general principle that the agreement and conduct of the international organization must be governed by its relevant rules. It had been agreed that, where States were concerned, article 45 should apply to the cases covered by articles 46 to 50 and article 60, as well as by the future article 62, which would correspond to article 62 of the Vienna Convention. With regard to international organizations, however, one member had reserved his position on the reference, in paragraph 2 of the article, to article 46.

<sup>3</sup> For the text of all the draft articles adopted so far by the Commission, see *Yearbook... 1978*, vol. II (Part Two), pp. 124 *et seq.*, document A/33/10, chap. V, sect. B, 1.

10. The Special Rapporteur had also proposed two variants for article 46. The difference between variants A and B was that the latter included an additional paragraph 4, defining a “manifest” violation in the case of an international organization. The other three paragraphs were identical in both variants save that, in variant B, the order of paragraphs 2 and 3 had been reversed. The Drafting Committee had decided to retain the four paragraphs of variant B. Paragraph 1, relating to the consent of a State, was identical with paragraph 1 of the original draft, except that the phrase “between one or more States and one or more international organizations” had been added after the word “treaty”, in accordance with the usage adopted throughout the draft. Paragraph 2 corresponded to paragraph 2 of variant B, but the words “the preceding paragraph” had been replaced by “paragraph 1”.

11. Paragraph 3 corresponded to paragraph 3 of variant B and to paragraph 2 of variant A, but the phrase “and concerned a rule of the organization of fundamental importance” had been deleted. In that connexion, the Drafting Committee had taken account of the opinion of those members who considered that international organizations should be protected even more than States in the event of a violation of the rules of the organization governing their competence to conclude treaties, all such rules being of fundamental importance. It had also taken note of the views of those members of the Commission who considered that a determination of what was “manifest” must necessarily be subjective, but that only the violation of a fundamental rule could be “manifest”, so that in effect the two conditions became one.

12. Paragraph 4 corresponded to paragraph 4 of variant B, but the Drafting Committee had preferred to define a violation as manifest not by reference to the “normal practice” of an organization, in view of the difficulties that would create, but by reference to the treaty partners of an organization. The phrase following the words “a violation is manifest” had therefore been amended to read “if it is or ought to be within the cognizance of any contracting State or any other contracting organization”. The organization would thus be in a position to invoke, as invalidating its consent, not only a violation which was known to its treaty partners but also a violation which, even though it ought to have been within their cognizance, was not known to them because they had failed to satisfy the requirement of reasonable diligence.

13. The CHAIRMAN invited the Commission to consider the articles proposed by the Drafting Committee one by one.

#### PART IV (Amendment and modification of treaties)

*The title of part IV was adopted.*

ARTICLE 39<sup>4</sup> (General rule regarding the amendment of treaties)<sup>5</sup>

<sup>4</sup> For consideration of the text initially submitted by the Special Rapporteur, see *Yearbook... 1978*, vol. I, pp. 177 *et seq.*, 1507th meeting.

<sup>5</sup> For text, see para. 2 above.

*Article 39 was adopted.*

ARTICLE 40<sup>6</sup> (Amendment of multilateral treaties)<sup>7</sup>

14. Mr. VEROSTA proposed that, to make the French text of paragraph 2 correspond more closely to the English, the position of the words “selon le cas” should be changed, so that the French text would read: “Toute proposition tendant à amender un traité multilatéral dans les relations entre toutes les parties doit être notifiée à tous les Etats et à toutes les organisations contractantes ou, selon le cas, à toutes les organisations contractantes...”.

15. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to approve that amendment.

*It was so decided.*

*Article 40, as amended in the French version, was adopted.*

ARTICLE 41<sup>8</sup> (Agreements to modify multilateral treaties between certain of the parties only)<sup>9</sup>

*Article 41 was adopted.*

PART V (Invalidity, termination and suspension of the operation of treaties)

#### SECTION 1 (General provisions)

*The titles of part V and section 1 were adopted.*

ARTICLE 42<sup>10</sup> (Validity and continuance in force of treaties)<sup>11</sup>

16. Mr. USHAKOV proposed that the words “of the present draft articles”, in the three paragraphs of article 42, should be replaced by the words “of the present articles”, so that the provision would be in conformity with the rest of the text in the three languages.

17. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to approve that amendment.

*It was so decided.*

*Article 42, as amended, was adopted.*

ARTICLE 43<sup>12</sup> (Obligations imposed by international law independently of a treaty)<sup>13</sup>

*Article 43 was adopted.*

<sup>6</sup> For consideration of the text initially submitted by the Special Rapporteur, see *Yearbook... 1978*, vol. I, pp. 182 *et seq.*, 1508th meeting, paras. 1–27.

<sup>7</sup> For text, see para. 2 above.

<sup>8</sup> For consideration of the text initially submitted by the Special Rapporteur, see *Yearbook... 1978*, vol. I, pp. 185 *et seq.*, 1508th meeting, paras. 28 *et seq.*, and 1509th meeting, paras. 1–20.

<sup>9</sup> For text, see para. 2 above.

<sup>10</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1546th meeting, paras. 11–42, and 1547th meeting, paras. 1–35.

<sup>11</sup> For text, see para. 2 above.

<sup>12</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1547th meeting, paras. 36 *et seq.*

<sup>13</sup> For text, see para. 2 above.

ARTICLE 44<sup>14</sup> (Separability of treaty provisions)<sup>15</sup>

*Article 44 was adopted.*

ARTICLE 45<sup>16</sup> (Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty)<sup>17</sup>

18. Mr. USHAKOV repeated the reservations on paragraph 2 which he had expressed in the Drafting Committee. He considered the reference to article 46 incorrect because an organization could not act in contravention of its own rules and, in particular, of its constituent instrument. To be correct, the reference should be to articles 47 to 50.

19. The CHAIRMAN said that if there were no objections he would take it that the Commission adopted article 45, with the reservation expressed by Mr. Ushakov.

*It was so decided.*

SECTION 2 (Invalidity of treaties)

*The title of section 2 was adopted.*

ARTICLE 46<sup>18</sup> (Violation of provisions regarding competence to conclude treaties)<sup>19</sup>

*Article 46 was adopted.*

ARTICLE 47<sup>20</sup> (Specific restrictions on authority to express or communicate consent to be bound by a treaty)<sup>21</sup>

*Article 47 was adopted.*

ARTICLE 48<sup>22</sup> (Error)<sup>23</sup>

*Article 48 was adopted.*

ARTICLE 49<sup>24</sup> (Fraud)<sup>25</sup>

*Article 49 was adopted.*

ARTICLE 50<sup>26</sup> (Corruption of a representative of a State or of an international organization)<sup>27</sup>

*Article 50 was adopted.*

ARTICLE 51<sup>28</sup> (Coercion of a representative of a State or of an international organization)<sup>29</sup>

*Article 51 was adopted.*

ARTICLE 52<sup>30</sup> (Coercion of a State or of an international organization by the threat or use of force)<sup>31</sup>

*Article 52 was adopted.*

ARTICLE 53<sup>32</sup> (Treaties conflicting with a peremptory norm of general international law (*jus cogens*))<sup>33</sup>

*Article 53 was adopted.*

SECTION 3 (Termination and suspension of the operation of treaties)

*The title of section 3 was adopted.*

ARTICLE 54<sup>34</sup> (Termination of or withdrawal from a treaty under its provisions or by consent of the parties)<sup>35</sup>

*Article 54 was adopted.*

ARTICLE 55<sup>36</sup> (Reduction of the parties to a multilateral treaty below the number necessary for its entry into force)<sup>37</sup>

*Article 55 was adopted.*

ARTICLE 56<sup>38</sup> (Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal)<sup>39</sup>

*Article 56 was adopted.*

ARTICLE 57<sup>40</sup> (Suspension of the operation of a treaty under its provisions or by consent by the parties)<sup>41</sup>

*Article 57 was adopted.*

ARTICLE 58<sup>42</sup> (Suspension of the operation of a multilateral treaty by agreement between certain of the parties only)<sup>43</sup>

*Article 58 was adopted.*

<sup>14</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1548th meeting, paras. 1-5.

<sup>15</sup> For text, see para. 2 above.

<sup>16</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1548th meeting, paras. 6 *et seq.*, 1549th meeting, paras. 5 *et seq.*, and 1550th meeting, paras. 1-21.

<sup>17</sup> For text, see para. 2 above.

<sup>18</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1550th meeting, paras. 22 *et seq.*, 1551st meeting, and 1552nd meeting, paras. 3-24.

<sup>19</sup> For text, see para. 2 above.

<sup>20</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1552nd meeting, paras. 35 *et seq.*, and 1553rd meeting.

<sup>21</sup> For text, see para. 2 above.

<sup>22</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1557th meeting, paras. 1-9.

<sup>23</sup> For text, see para. 2 above.

<sup>24</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1557th meeting, paras. 10-26.

<sup>25</sup> For text, see para. 2 above.

<sup>26</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1557th meeting, paras. 27 *et seq.*

<sup>27</sup> For text, see para. 2 above.

<sup>28</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1558th meeting, paras. 1-4.

<sup>29</sup> For text, see para. 2 above.

<sup>30</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1558th meeting, paras. 5 *et seq.*

<sup>31</sup> For text, see para. 2 above.

<sup>32</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1559th meeting, paras. 3-14.

<sup>33</sup> For text, see para. 2 above.

<sup>34</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1559th meeting, paras. 15-24.

<sup>35</sup> For text, see para. 2 above.

<sup>36</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1559th meeting, paras. 25-33.

<sup>37</sup> For text, see para. 2 above.

<sup>38</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1559th meeting, paras. 34-39.

<sup>39</sup> For text, see para. 2 above.

<sup>40</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1559th meeting, paras. 15-24.

<sup>41</sup> For text, see para. 2 above.

<sup>42</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1559th meeting, paras. 40-44.

<sup>43</sup> For text, see para. 2 above.

ARTICLE 59<sup>44</sup> (Termination or suspension of the operation of a treaty implied by conclusion of a later treaty)<sup>45</sup>

*Article 59 was adopted.*

ARTICLE 60<sup>46</sup> (Termination or suspension of the operation of a treaty as a consequence of its breach)<sup>47</sup>

*Article 60 was adopted.*

20. The CHAIRMAN observed that the Commission had completed its work on item 4 of the agenda for the current session. He congratulated the Special Rapporteur and thanked the Drafting Committee and its Chairman.

21. He reminded the Commission that it had previously considered the possibility of communicating the text of the completed articles to States for detailed study.

**Co-operation with other bodies (concluded)\***  
[Item 13 of the agenda]

STATEMENT BY THE OBSERVER FOR THE  
EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

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

23. Mr. FURRER (Observer for the European Committee on Legal Co-operation) said that at its thirtieth session, in November 1978, the European Committee had had the privilege of hearing a statement by the Chairman of the International Law Commission. Since then, the Committee had met in July 1979 in Strasbourg, where it had elected a new Chairman, Mr. Pontoppidan, Permanent Under-Secretary of State at the Ministry of Justice of Denmark, and had constituted a new Bureau. Its work had been concerned with two major topics: immunity of States and peaceful settlement of international disputes.

24. The Committee had taken up the 1972 European Convention on State Immunity, in order to examine the prospects for its ratification by a large number of States members of the Council of Europe. The exchange of views on that Convention had not produced any criticism of the solutions it proposed, even though attention had been drawn to the complexity and high degree of technicality of the régime it established, those characteristics being, perhaps, the cause of the difficulties some countries apparently had in ratifying the instrument. In regard to immunity from

jurisdiction, the Convention adopted a particular combination of exceptions, principles and references to the practice of States, the principle of immunity not appearing until article 15, after the enumeration of the many cases in which a foreign State could not invoke immunity. Furthermore, it was provided that, if a State followed a practice which was more restrictive than the régime of the Convention, it could maintain that practice by making an express declaration; nevertheless, the said practice could not be applied to acts of foreign States performed in the exercise of governmental authority (*acta jure imperii*).

25. Where execution was concerned, the Convention in no way touched upon the immunity of foreign States from attachment. On the other hand, it confirmed the obligation of States parties to give effect to judgements rendered against them, unless they were based on the exercise of jurisdiction considered to go beyond the terms of the Convention. The Convention also contained a chapter on procedure.

26. That instrument had been ratified by four States: Austria, Belgium, Cyprus and, on 3 July 1979, the United Kingdom. The prospects for further ratifications were good, seven other countries having adopted a favourable attitude and stated that their preparations were already well advanced. The Convention thus appeared to be a clear manifestation of the will of a large number of European States regarding immunity of jurisdiction.

27. The Convention provided for the compulsory reference of disputes concerning its interpretation or application to the International Court of Justice. However, the additional protocol attached to the Convention replaced that jurisdiction by that of a European court consisting of members of the European Court of Human Rights, which was also competent to hear appeals by private persons who considered themselves to have been injured because a contracting State had not given effect to a judgement delivered against it in conformity with the Convention. The additional protocol had been ratified by Austria, Belgium and Cyprus, but would enter into force only after five ratifications had been received. It could be regarded, to some extent, as the forerunner of European machinery in that sphere.

28. The Committee had also considered the 1957 European Convention for the Peaceful Settlement of Disputes, which had been applied in very few cases, although there was no lack of disputes. A number of members of the Parliamentary Assembly of the Council of Europe had taken the initiative of suggesting that the Convention be revised with a view, in particular, to substituting the jurisdiction of the European Court of Human Rights for that of the International Court of Justice in legal disputes, and to giving the European Court certain powers of arbitration in non-legal disputes. That suggestion, however, had not been favourably received by the Committee.

29. Among the other activities of the Committee carried on in conformity with the main principles of the Council of Europe, which was working to facilitate the

<sup>44</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1559th meeting, paras. 45-47.

<sup>45</sup> For text, see para. 2 above.

<sup>46</sup> For consideration of the text initially submitted by the Special Rapporteur see 1559th meeting, paras. 48 *et seq.*

<sup>47</sup> For text, see para. 2 above.

\* Resumed from the 1568th meeting.

enjoyment of human freedom and to guarantee to everyone the protection of his rights and interests, mention might be made of the following: preparation of a new draft convention for the protection of individuals with regard to automatic processing of personal data; the new draft convention on recognition and enforcement of decisions relating to the custody of children and on restoration of custody of children recently adopted by the Committee; and the work of the Council of Europe on territorial asylum and refugees, which should help to resolve, on the basis of the United Nations conventions for the protection of refugees, the problems of the country of first asylum and the country of final settlement, regarding which it would be desirable for States to adopt certain common principles.

30. Finally, in May 1979, the Committee of Ministers of the Council of Europe had drafted the text of a European framework convention on transfrontier co-operation between local authorities. That instrument was the first multilateral treaty by which several States solemnly granted their local or regional authorities the right to enter into treaty relations, at their discretion, with their counterparts in a neighbouring State, on matters of public interest such as regional, rural and urban development, infrastructure planning and protection of the environment. The instrument was a considerable innovation, and was particularly welcome to all persons responsible for frontier regions who had to resolve practical problems such as those relating to the use and purification of water, and the protection of its quality.

31. He reminded the Commission that it had a permanent invitation to send representatives to, and to participate in, the sessions of the European Committee on Legal Co-operation, the next of which was to be held from 26 to 30 November 1979. He hoped that the Chairman of the Commission would be able to accept that invitation.

32. The CHAIRMAN thanked the observer for the European Committee on Legal Co-operation for his statement and said that the Commission was glad to know that the Committee made a continuing study of the main problems of international law on the Commission's agenda. The previous year, he had had the honour of being present at the Committee's deliberations, and he had then been able to observe the great interest it took in the activities of the Commission. He requested Mr. Furrer to reiterate to the Committee his thanks for the welcome it had accorded him on that occasion.

33. There was no doubt that the Commission, too, could benefit from the work of the Committee in making further progress in the codification of international law. He requested Mr. Furrer to inform the Committee that a representative of the Commission would be able to attend its session in November 1979. Lastly, he remarked on the value of exchanges of that kind for the maintenance of co-operative relations between the various bodies working on the progressive codification of international law.

34. Mr. REUTER stressed that co-operation in a restricted area offering favourable conditions facilitated the formulaion of satisfactory solutions. Without being overoptimistic, he was nevertheless convinced that, if other regions of the world followed the example given by the European Committee on Legal Co-operation, the Commission would be able, in the perhaps not too distant future, to be more ambitious in its aims than it was at present. In particular, he thought the formula of open co-operation adopted by the Council of Europe might one day prove useful to the Commission. For example, the path marked out by the convention on transfrontier co-operation between local authorities was extremely promising. The different regions of the world should follow the example of the European Committee, in the interests of the progress of international law.

*The meeting rose at 11.30 a.m.*

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## 1577th MEETING

*Thursday, 26 July 1979, at 10.15 a.m.*

*Chairman:* Mr. Milan ŠAHOVIĆ

*Members present:* Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

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### The law of the non-navigational uses of international watercourses (*continued*)\* (A/CN.4/320 and Corr.1)

[Item 5 of the agenda]

#### FIRST REPORT OF THE SPECIAL RAPporteur (*continued*)

1. Mr. SCHWEBEL (Special Rapporteur) reminded the Commission that, in introducing his first report on the topic (A/CN.4/320 and Corr.1) at its 1554th meeting, he had pointed out that the document was designed to lay a factual basis for treating the subject in a manner that responded to the physical realities of water. He had further indicated that, to deal with it successfully, the Commission must dispose of two paramount problems: on the one hand, the diversity of watercourses and the need for special régimes suited to their varying characteristics and, on the other, the present lack of agreement among States and in the

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\* Resumed from the 1556th meeting.