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Summary record of the 1606th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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archives. In the course of some more general remarks on the question of the expenses of reproduction, he said that if a State—whether predecessor or successor State—was entitled to archives but it was impossible to transfer them to that State, for example, owing to the operation of the principle of the indivisibility of the archives, it was normal that the State to which the archives passed should be responsible for the expense of reproduction. By contrast, if a State was not entitled to archives but asked for a reproduction of the archives from the State to which they passed, then, logically the expenses of reproduction should be chargeable to the requesting State. He suggested that the Drafting Committee might consider how the principle could be formulated.

34. Mr. Barboza had very pertinently compared the criteria of the connexion of archives that were referred to in article E and in article B' respectively, and had made an incidental reference to situations in which private property might be expropriated. He (Mr. Bedjaoui) pointed out, however, that the criterion of the connexion with the predecessor State's activity in the territory, referred to in article E, subparagraph 2 (a), should be seen in the light of the notion of equity, which, under subparagraph 2 (b), governed State archives other than those referred to in subparagraph 2 (a). In his comments concerning archives belonging to the territory Mr. Barboza had referred to article 5, which defined the meaning of the expression "State property" in terms covering not only property but also rights and interests. Allowance might perhaps be made for the concern of a State to ensure that certain archives should not leave the territory affected by the succession.

35. He thought that the Drafting Committee might try to bring article E into line with article 13, as had been suggested by Mr. Yankov at the 1604th meeting, but the Committee would have to make sure that in article E the importance and necessity of an agreement were not minimized. As several members of the Commission had said, in the final analysis agreement was always necessary in cases where part of a State's territory separated from that State and formed another State.

36. The rules in articles E and F that would be applicable "in the absence of an agreement" were not of course residual rules. Those rules offered guidelines, without prejudice to the sovereignty of States, in all cases where an agreement was concluded.

37. Unlike Mr. Jagota, who took the view that article E related exclusively to administrative archives, he considered that the article might apply to any archives, including historic ones, for the archives connected with the State's activity might be the archives of an ancient State and hence of historic value. Similarly, the archives referred to in subparagraph 2 (b) of article E might be historic archives.

38. It had been pointed out by Mr. Riphagen that at its previous session the Commission had agreed that

only two articles would be drafted concerning State archives, and that those articles would form a self-contained whole. Since the Commission had been invited to supplement articles A and B, it might perhaps need to review the terms of those articles, and in particular those of paragraph 5 of article B. In his (Mr. Bedjaoui's) opinion, the point was one to be considered by the Drafting Committee, not by him as Special Rapporteur.

39. A point which would probably be taken up by the Commission in the course of the second reading was that mentioned by Mr. Quentin-Baxter at the 1604th meeting: in preparing the draft articles the Commission had followed the typology employed in the case of the succession of States in respect of treaties, but was now in some respects a prisoner of that typology. For example, article B', which dealt only with territorial adjustments, possibly of a minor character, seemed to prevail over article E, which dealt with true cases of secession. The order of those articles might be changed accordingly.

40. In conclusion he wished to thank Mr. Jagota for the information he had provided at the present meeting about India's experience, and Mr. Sucharitkul for the interesting examples he had cited at the 1604th meeting concerning events in the Asian region.

41. The CHAIRMAN suggested that draft articles E and F should be referred to the Drafting Committee.

*It was so decided.*¹⁰

The meeting rose at 11.55 a.m.

¹⁰ For consideration of the texts proposed by the Drafting Committee, see 1627th meeting, paras. 26 *et seq.*

1606th MEETING

Friday, 6 June 1980, at 11.20 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Co-operation with other bodies

[Item 10 of the agenda]

STATEMENT BY THE OBSERVER FOR THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

1. The CHAIRMAN said that it was his privilege, on

behalf of all the members of the Commission, to extend a very warm welcome to Mr. Sen, Secretary-General of the Asian-African Legal Consultative Committee, and to invite him to address the meeting.

2. Mr. SEN (Observer for the Asian-African Legal Consultative Committee) said the fact that almost all of the Commission's members from Asia and Africa had played and continued to play leading and effective roles in the work of the Asian-African Legal Consultative Committee and the Committee's warm association with many members from other regions indicated how closely linked the two bodies had become in the twenty years since the establishment of official relations between them. Such close ties were only natural, since the Commission and the Committee were pursuing the common goal of bringing about a system of law which would command universal respect in the relations between nations.

3. It was particularly gratifying that Mr. Šahović, the Chairman of the Commission's thirty-first session, had been able to attend the Committee's twenty-first session, which had been held at Djakarta as part of the silver jubilee commemoration of the historic Asian-African Conference held at Bandung in 1955—a conference to which the Committee owed its existence—and had brought into focus the political impact achieved by the Committee in promoting Asian-African co-operation on a number of matters of common concern, in the context of wider co-operation among nations at a global level. The Committee had thus been happy to welcome Mr. Šahović not only because the Commission had given it great encouragement during its formative years, but also because Mr. Šahović was from a country that had very close links with the developing countries of Asia and Africa and had been at the forefront of the non-aligned movement, which was itself an important outgrowth of the Bandung Conference. In that connexion, he wished to express the Committee's deep sorrow at the death of President Tito, who had made an enormous and lasting contribution to international peace and security.

4. Although its competence lay primarily in the field of international law, the Committee had had to expand its activities in the past ten years to meet the practical needs of its members and to carry out the task entrusted to it by the Bandung Conference of promoting Asian-African co-operation. It had therefore concentrated its attention on the law of the sea. The needs and interests of developing countries in Africa, Asia and Latin America had to be reflected in a convention to regulate activities carried out in an area embracing nearly three-quarters of the world's surface, and those countries therefore had to take concerted action. In the early stages, the Committee's work had been directed towards the compilation and preparation of voluminous preparatory material, but with the passage of time its activities had focused on the promotion of consultations among Asian and African

States and on the organization of discussions among developed and developing countries as a means of assisting in the negotiations for the conclusion of a convention that would be acceptable to all nations. The law of the sea had been a priority item on the agenda of the twenty-first session, at which the Committee had taken advantage of the presence of observer delegations from all over the world to assess the progress made at the Third United Nations Conference on the Law of the Sea, and had discussed some of the crucial issues that would have to be resolved at the ninth session of the Conference, to be resumed in July 1980.

5. The Committee was also engaged in work on a closely allied topic, namely, the optimum utilization of fishery resources in the exclusive economic zone. Although the Conference on the Law of the Sea had not yet concluded a convention, broad areas of agreement had none the less emerged regarding the rights and jurisdiction of coastal States over their exclusive economic zones up to a limit of 200 nautical miles. Nearly every coastal State in the world had therefore taken legislative or administrative steps to claim such extended jurisdiction over the areas in question. The worldwide establishment of 200-mile economic zones would bring within national jurisdictions nearly one-third of the world's oceans and 90 per cent of the resources now under commercial exploitation in marine areas. The two resources most likely to be exploited in the immediate future on a global scale were the fishery resources of the exclusive economic zone and the petroleum and gas resources of the continental shelf.

6. In accordance with its policy of providing practical assistance to member Governments, the Committee had decided at its twentieth session (Seoul, February 1979) that its secretariat should undertake a programme of work designed to optimize the benefits accruing from the exploitation of the fisheries resources of the exclusive economic zones of the countries of the Asian-African region. Since the achievement of that objective would require developing coastal States to take appropriate legislative and administrative measures to regulate fishing activities, in particular, those carried out by foreign fishermen, and to strengthen their fisheries' potential, the Committee had decided to provide member Governments with drafts of model legislation. In addition, it had prepared a model bilateral umbrella agreement allowing foreign fishing on certain terms and conditions, with provision for assistance to be rendered by the home States of foreign fishermen in building up the fishing industries of coastal States. The drafts had been presented at Djakarta at the twenty-first session and were to be considered in detail by expert groups later in the year. The Committee hoped to work in close co-operation with FAO in that regard.

7. Another field of activity engaging the attention of the Committee was protection of the environment. In December 1978, an expert group had identified areas

which called for the urgent establishment of environmental protection mechanisms and had recommended the legislative and administrative action to be taken by member Governments. The Committee had decided to carry on its work in that field in stages, on the basis of a five-year programme. Priority was given to the question of marine pollution and, at the Djakarta session, a draft scheme had been submitted on subregional co-operation to combat pollution resulting from accidents to oil tankers or blow-outs in off-shore installations. The scheme was being studied in consultation with IMCO.

8. The most important activity in which the Committee was likely to be involved in the 1980s was that of regional economic co-operation, including industrialization. Its work in that area would demand the preparation of complex legal instruments to establish a balance between the interests of developing States and industrialized nations and the consideration and formulation of new rules and patterns of investment protection.

9. The Committee had, of course, been working on various aspects of economic co-operation for the past twenty years. For example, it had decided at its third session (Colombo, 1960) to consider issues relating to commodities and the international sale of goods and, at its fourth session (Tokyo, 1961) it had approved a plan of work designed to assist member Governments in the enactment of legislation on trade, investment, Customs regulations and foreign exchange control. Its continuing involvement in the economic field had led to the establishment of official relations with UNCTAD in 1969 and with UNCITRAL in 1971. At its seventeenth session (Kuala Lumpur, 1976), the Committee had recommended the adoption of two standard contracts for transactions involving sales of agricultural produce and minerals exported by the countries of the region, with a view to replacing the standard terms and conditions of sale drawn up by trading institutions that were oriented to the needs of colonial economies. Those standard contracts had been published by the United Nations as documents of the Economic and Social Council. Another standard contract, relating to light machinery and durable consumer goods, had been adopted at the Djakarta session.

10. The Committee's most spectacular achievement in the economic field had perhaps been the adoption of its integrated scheme for the settlement of disputes relating to economic and commercial matters, which was designed to create stability and confidence in economic transactions in the Asian-African region. Two regional centres had been established, one at Kuala Lumpur and one at Cairo, and a third was being set up at Lagos. The World Bank's International Centre for Settlement of Investment Disputes (ICSID) had concluded formal agreements with the Committee on co-operation with, and assistance to, those regional centres. The Japan Shipping Exchange, one of the

world's major specialized shipping institutions, had agreed in principle to make its services available to the countries of the region under additional facility rules within the framework of the Committee's disputes settlement scheme. The Committee's initiatives in connexion with standard contracts and the settlement of disputes could be regarded as important contributions to the establishment of the new international economic order.

11. Industrialization was yet another area in which the Committee could make a positive contribution to the economic growth of the developing countries of the region by generating new ideas and policy approaches. A paper submitted at the twenty-first session contained a number of suggestions for a possible pattern of regional co-operation in the industrial field and a new approach to the question of investment protection.

12. In the past few years, the Committee had been mainly sought to provide member Governments with practical assistance, but it was not unmindful of the value of the codification and progressive development of international law, which would have a lasting effect on relations between nations. That aspect of its activities had been specifically assigned to a section of the Committee's secretariat which regularly followed the work of the Commission. At its nineteenth session (Doha, 1978), the Committee had made certain recommendations on the topic of succession of States in respect of treaties, but in the past two years had not made many suggestions on matters under consideration by the Commission because a larger number of leading jurists from the Asian-African region were included among the members. The Committee nevertheless remained deeply interested in the Commission's work, particularly since most of the items on the Commission's agenda were of vital importance to its member Governments. It looked forward to continued and closer co-operation with the Commission in those areas in the years to come.

13. Mr. ŠAHOVIĆ thanked Mr. Sen for his tribute to the memory of President Tito and to Yugoslavia's role in the non-aligned movement.

14. When he had attended the twenty-first session of the Asian-African Legal Consultative Committee, he had seen for himself that the countries of Asia and Africa, although confronted with serious political and economic difficulties, nevertheless actively pursued their endeavours to promote the observance and codification of international law. The Committee followed very closely the work of the Commission and other United Nations legal bodies and its contribution to the shaping of the law of the sea and to the establishment of a new international economic order certainly deserved to be reflected in universal conventions. The policy outlined 25 years earlier at the Bandung Conference, which had led to the establishment of the Committee, was more valid than ever in the world of today.

15. The Commission should strengthen its links with the Committee, a very active body and one that, judging more particularly from the high quality of the documents discussed at its twenty-first session, which indeed deserved to be circulated throughout the world, could not fail to have an ever-greater impact on international law.

16. Lastly, he wished to emphasize the part played by Mr. Sen in arranging the Committee's Djakarta session, which could be viewed as a major international event that had been more than regional in its importance.

17. Mr. TSURUOKA, also speaking on behalf of Mr. SUCHARITKUL and Mr. TABIBI, said that the Asian-African Legal Consultative Committee had greatly expanded in the course of twenty years, since it now had some forty members and as many associate members. The fact that it represented so many countries gave it a place in international legal circles that was made even more important by the remarkable quality of its work and he welcomed the increasingly close ties between the Commission and the Committee.

18. Mr. EVENSEN expressed his appreciation of the Asian-African Legal Consultative Committee's highly effective contribution to international law and to the economic development of its members and to the activities of the United Nations as a whole. Its work in connexion with the Conference on the Law of the Sea, which had done much to solve the complex questions involved in deep-sea mining, deserved special mention. Among the many other positive aspects of its activities was the establishment of fruitful relations between representatives from all nations.

19. Mr. CALLE Y CALLE, speaking on behalf of the Latin American members of the Commission, thanked Mr. Sen for his report on the Committee's work. It was particularly gratifying to note that the Djakarta session had been concerned with the establishment of justice in international society on the basis of the principles formulated at Bandung, and that the Committee did not simply engage in an academic exercise but also provided Governments with practical advice in a number of important areas.

20. Mr. THIAM, also speaking on behalf of Mr. BEDJAOUÏ, joined in the admiration expressed for the work of the Asian-African Legal Consultative Committee, which had succeeded in incorporating age-long values into modern international law and, in the light of the concerns of the third world, was now embarking on further endeavours to promote the establishment of a new international economic order.

21. Mr. QUENTIN-BAXTER, congratulating Mr. Sen on the success of the Djakarta session of the Asian-African Legal Consultative Committee, said that his own attendance at a meeting held at the Committee's headquarters had enabled him to see for himself the breadth of interests generated by the

Committee. Its activities were not confined to questions of codification, but extended to practical co-operation in a number of fields ranging from the law of the environment to the preparation of standard contracts relating to the sale of goods. The great interest taken by the Committee, as by other regional organizations, in the work of the Commission, and in other international legal developments, improved the quality of discussion of legal matters and enhanced the possibilities of international agreement. He trusted that the Committee, despite its many other commitments, would continue to follow the work done by the Commission.

22. The CHAIRMAN, thanking Mr. Sen for his report on the activities of the Asian-African Legal Consultative Committee, said that Mr. Sen's visit marked the continuation of a close and cordial association between the Commission and the Committee that had developed over many years. The Committee could claim to be one of the most influential organizations of its kind, and the quality of its research, as well as the scope of its substantial yet discreet assistance to Governments, had won the universal respect and confidence of its members.

23. Of particular interest to the Commission was the Committee's policy of carrying out, for the benefit of its members, a parallel and complementary study of the topics before the Commission and the United Nations. In that way it was able to offer guidance to its members and to promote consultation among them on issues before the international community. The success with which the Committee had carried out its functions under the dynamic leadership of its Secretary General was exemplified by the consultative process which had preceded the United Nations Conference on the Law of Treaties and the series of meetings which it was currently arranging in connexion with the Conference on the Law of the Sea.

24. He wished the Committee every success and expressed the hope that the co-operation between the Commission and the Committee would be strengthened still more in the future.

Succession of States in respect of matters other than treaties (*continued*) (A/CN.4/322 and Add.1 and 2,¹ A/CN.4/333)

[Item 1 of the agenda]

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

25. The CHAIRMAN said that, in a characteristically valuable report, the Special Rapporteur had provided new insights into the subject of succession in respect of State archives and had placed before the Commission a set of draft articles that would form a valuable supplement to the main body of his work.

¹ Reproduced in *Yearbook . . . 1979*, vol. II (Part One).

26. On the basis of a detailed analysis of the material he had compiled, the Special Rapporteur had developed a number of principles governing that particular class of State property: the indivisibility, or unity, of State archives; the connexion with, or essential relationship to, the place of their origin or constitution; the rights arising on succession that might require the division of archives; the reproduction of State archives or the payment of compensation on the basis of equitable principles; and the underlying but dominant theme, which was of overwhelming significance in the ordering of modern international relations, namely, the need for agreement, co-operation and consultation.

27. The Special Rapporteur's oral introduction to the draft articles relating to archives had attested to his encyclopaedic knowledge and mastery of the subject. The contributions by members had been equally valuable, and the Commission could be confident that the draft articles would emerge, after consideration by the Drafting Committee, to adorn in a fitting manner the great work of which a first reading had been completed in 1979.

28. In his latest work, the Special Rapporteur had once again displayed his outstanding qualities: a scholar's passionate desire to protect and ensure the proper use of archival material, which might be of the highest evidentiary value; an acute sensitivity to the cultural significance and value of archives and to the incalculable sense of deprivation that could be caused by their loss; and an honest mind, dedicated to developing rules and principles that would ensure that those with the greatest moral right should have the use or enjoyment of that kind of State property.

29. He congratulated the Special Rapporteur on the completion of the first reading of the supplementary articles on State archives and thanked him for the work he had done on behalf of the Commission and of the United Nations as a whole.

The meeting rose at 12.20 p.m.

1607th MEETING

Monday, 9 June 1980, at 3.10 p.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Casteñada, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

The law of the non-navigational uses of international watercourses (A/CN.4/332 and Add.1)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

1. The CHAIRMAN invited the Special Rapporteur to introduce his second report on the law of the non-navigational uses of international watercourses (A/CN.4/332 and Add.1) and, in particular, draft articles 1 to 7 (*ibid.*, paras. 52, 59, 64, 69, 105, 130 and 142), which read:

Article 1. Scope of the present articles

1. The present articles apply to the uses of the water of international watercourse systems and to problems associated with international watercourse systems, such as flood control, erosion, sedimentation and salt water intrusion.

2. The use of water of international watercourses for navigation is within the scope of these articles in so far as provisions of the articles respecting other uses of water affect navigation or are affected by navigation.

Article 2. System States

For the purposes of these articles, a State through whose territory water of an international watercourse system flows is a system State.

Article 3. Meaning of terms

[To be supplied subsequently.]

[This article does not attempt to set forth any definitions of terms used in the draft articles because of a decision to leave open, temporarily, the question of the scope of articles. There are differences whether an international watercourse system should be considered as comprising:

(a) only boundary waters and the main streams of watercourses crossing boundaries; or

(b) river basins, including tributaries, whether or not solely within a system State; or

(c) drainage basins including all water whether surface or underground within the geographic limits of a watershed, moving toward a common terminus; or

(d) some combination of the above.

Pending a decision on the foregoing issue only terms not affected by the absence of a decision will be defined.]

Article 4. System agreements

1. These articles shall be supplemented, as the needs of an international watercourse system may require, by one or more system agreements.

2. A system agreement may be entered into with respect to an entire international watercourse system, or with respect to any part thereof provided that the interests of all system States are respected therein.

Article 5. Parties to the negotiation and conclusion of system agreements

1. All system States are entitled to participate in the negotiation and conclusion of any system agreement that applies to the international watercourse system as a whole.

2. Each system State whose use or enjoyment of the water of an international watercourse system may be affected to an