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Summary record of the 1639th meeting

Topic:
Other topics

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normally used with reference to judicial decisions. He proposed that it should be replaced by the word “said”.

It was so decided.

Paragraph (1), as amended, was approved.

Paragraph (2)

Paragraph (2) was approved.

The commentary to article 80, as amended, was approved.

Part VII, as amended, was approved.

The meeting rose at 12.55 p.m.

1639th MEETING

Wednesday, 23 July 1980, at 9.45 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Diaz González, Mr. Evensen, Mr. Francis, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

1. The CHAIRMAN said it was his pleasure to welcome to the Commission the Observer for the Arab Commission for International Law, Mr. Mahmoud El Baccouch, Director of the Treaties Department of the League of Arab States.

Draft report of the Commission on the work of its thirty-second session (continued)

CHAPTER IV. Question of treaties concluded between States and international organizations or between two or more international organizations (concluded) (A/CN.4/L.314 and Add.1 and Add.1/Corr.1)

ANNEX (A/CN.4/L.314/Add.1)

Commentary to the Annex to the draft articles (Procedures established in application of article 66)

2. The CHAIRMAN invited the Commission to consider, paragraph by paragraph, the commentary to the annex to the draft articles contained in document A/CN.4/L.314/Add.1.

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

3. Sir Francis VALLAT proposed that the word “extremely”, in the first sentence, should be deleted.

4. Mr. REUTER (Special Rapporteur) proposed that a corresponding change—namely, of the word “fort”—should be made to the French text.

It was so decided.

Paragraph (2), as amended, was approved.

Paragraph (3)

5. Mr. SCHWEBEL said that the fifth sentence was ambiguous and called for clarification.

6. Sir Francis VALLAT suggested that the sentence could be made clearer by replacing the word “might” by “cannot”.

7. Mr. SCHWEBEL suggested that, to remove all ambiguity, the word “which” should be replaced by the words “since they”.

8. Mr. REUTER (Special Rapporteur) proposed that the words “which might be members of the United Nations” should be replaced by the words “in their character as members of the United Nations, since they cannot be such members”.

It was so decided.

9. Mr. DÍAZ GONZÁLEZ said that in the Spanish version of the text, the meaning of the sentence in question did not correspond to the meaning of the English and French texts.

10. The CHAIRMAN said that the Spanish version of the text would be brought into line with the revised English and French versions.

On that understanding, paragraph (3), as amended, was approved.

Paragraphs (4)–(6)

Paragraphs (4)–(6) were approved.

Paragraph (7)

11. Mr. SCHWEBEL said that there appeared to be a typographical error in the second sentence of the English version of the text. The apostrophe after the word “States” should be deleted. Also, in the same sentence the word “an” should read “and”.

It was so decided.

Paragraph (7), as amended, was approved.

Paragraph (8)

12. Mr. SCHWEBEL proposed that the word “trust”, in the last sentence, should be replaced by the word “confidence”.

It was so decided.

Paragraph (8), as amended, was approved.

Paragraph (9)

Paragraph (9) was approved.

The commentary to the annex, as amended, was approved.

Chapter IV, as amended, was approved.

Tribute to the Special Rapporteur

13. The CHAIRMAN announced that the Commission had completed its first reading of the draft articles on treaties concluded between States and international organizations or between international organizations. He reminded members that, during preparation of the draft articles on the law of treaties from 1950 to 1966, the Commission had several times considered the question whether the draft should apply not only to treaties between States, but also to treaties concluded by other entities, in particular international organizations. The Commission had decided to confine its work to treaties between States, and the draft articles which finally became the basic proposal before the United Nations Conference on the Law of Treaties, held at Vienna in 1968 and 1969, had related to treaties between States, the Conference itself had recommended to the General Assembly that it should refer to the Commission the question of treaties concluded between States and international organizations, or between two or more international organizations.¹ In accordance with that recommendation, in 1969 the General Assembly had recommended, in paragraph 5 of its resolution 2501 (XXIV), that the Commission should study that question, in consultation with the principal international organizations.

14. In 1970, at its twenty-second session, the Commission had embarked on what had proved to be a decade of study of the question of treaties concluded between States and international organizations or between two or more international organizations. From the very first steps taken in the Commission's sub-committee on the topic in 1970, the entire programme of work had been conceived and executed under the guidance of Professor Paul Reuter. As the leading expert in the field, it was natural that the Commission should have turned to him for leadership. He had been appointed Special Rapporteur for the topic in 1971, and his brilliant series of reports had begun in 1972. In his first report,² after a careful review of references to the topic by the Commission, and afterwards by the Vienna Conference, he had made a preliminary examination of several essential problems such as the capacity of international organizations to conclude treaties; the form in which they expressed their consent to be bound by a treaty; the question of representation; the effect of treaties concluded by organizations; and the meaning of the

saving clause in article 5 of the Vienna Convention on the Law of Treaties regarding the "relevant rules of the organization". Those had been some of the areas in which the Commission, under Professor Reuter's guidance, had later made significant advances in the progressive development of the law. Between 1970 and 1974, the Commission's work had been substantially assisted by bibliographies, lists of treaties, and studies prepared by the Secretariat, as well as by the replies of the principal international organizations to a questionnaire circulated by the Commission.

15. Professor Reuter had presented his preliminary draft articles to the Commission in 1974, in his third report.³ In that year too, the Commission's thinking on the nature and scope of its study of the topic, and the form of presentation of the results, had become clearer. As to form, the Commission had decided to prepare draft articles "capable of constituting the substance of a Convention at the appropriate time",⁴ but not to prejudge its future decision on what recommendation it would ultimately make regarding the most appropriate procedure to be followed thereafter. That decision still remained to be taken, and would be taken at a later stage, after a further series of consultations envisaged by the Special Rapporteur with the principal international organizations. As to the nature and scope of the study, the topic's close relationship to the Vienna Convention seemed to ordain that the draft articles could not be divorced from that Convention, which should provide a general framework for them. The Commission's approach was summarized in a single sentence from the report on its twenty-sixth session:

The Commission can have no better guide than to take the text of each of the articles of that Convention in turn and consider what changes of drafting or of substance are needed in formulating a similar article dealing with the same problem in the case of treaties concluded between States and international organizations or between international organizations.⁵

The stage had thus been set for one of the most exacting tasks of development and codification ever undertaken—a task which, in the rigidity of its basic rules, might at that time have been unique.

16. In a series of nine reports presented to the Commission, the Special Rapporteur had faithfully observed the rules, while being careful, on each issue of significance, to bring home to the Commission the different ways in which those issues might be resolved. Through endless hours of intricate discussion, he had maintained the balance between those who had been more ready to establish an equivalence between the capacities of States and international organizations, and were eager to enter a new dimension of international legal theory and those who had been more cautious and had seen serious dangers in abandoning

¹ See *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. 285, "Resolution relating to Article 1 of the Vienna Convention on the Law of Treaties".

² *Yearbook . . . 1972*, vol. II, p. 171, document A/CN.4/258.

³ *Yearbook . . . 1974*, vol. II (Part One), p. 135, document A/CN.4/279.

⁴ *Ibid.*, p. 292, document A/9610/Rev.1, para. 136.

⁵ *Ibid.*, para. 139.

traditional distinctions which placed States in a pre-eminent position.

17. With 60 draft articles already sent out to Member States for comment, the 20 draft articles and the annex on procedures for dispute settlement considered by the Commission at the current session represented the final segment of the series. The report on those texts by the Drafting Committee and the Commission's adoption of them with the relevant commentaries marked the conclusion of the Commission's consideration on first reading of the entire series of articles presented by Mr. Reuter, many of which were of outstanding significance as progressive development of the law.

18. Mr. Reuter had been presented with an extraordinary task, involving not merely development and codification but, in addition, the most important work of adaptation. He had been asked to adapt what many held to be a near perfect statement of treaty principles so that it could apply in the realm of international organizations, of which little had been known. He had not been able to rely on a wealth of practice and case law from which to derive principles, nor—even if he had had such materials—had he been entirely free as to how to present the form and content of the principles; for in all cases he had had to take the Vienna Convention on the Law of Treaties as a guide. Nor should it be forgotten that the law of international organizations itself had continued to evolve during the ten years of his study, and it had been necessary for Mr. Reuter, and through him, the Commission, to keep abreast of and take account of such developments. These considerations had combined to make the study one of unusual complexity. To complete it successfully had required a mind not only superbly analytical and creative, but also of such subtlety and sophistication as to be able to carry out progressive development while remaining within the strict basic rules laid down. Mr. Reuter possessed those qualities in the highest degree. He had amply demonstrated them in the ten years in which he had led the Commission in exploring such difficult terrain. Under his leadership, the Commission had charted a course that would ensure the success of the second reading of the draft articles. Perhaps by then it would have been possible to reduce the areas which Mr. Reuter had so aptly termed *terra incognita*, or to eliminate them altogether.

19. The draft articles, as pioneered by him, or in some higher stage of evolution following their second reading, would without doubt be of very great interest to the whole international community of States and organizations. One had only to look at the new Convention on the Law of the Sea, and the new Agreement establishing the Common Fund for Commodities to appreciate the obviously highly topical nature of Professor Reuter's work. Far from being of no more than scientific interest, the subject of treaties between States and international organizations or between organizations would seem to be one

of high practical significance for the development of international law.

20. It was a measure of Mr. Reuter's wisdom and stature that he had been able to deal so brilliantly with such an extraordinary task, while maintaining the lightness of his scholarly touch, and an unfailing kindly good humour. He expressed the Commission's deep gratitude and appreciation to Mr. Reuter for guiding its work in a very difficult field to so successful a conclusion.

21. Mr. TSURUOKA, speaking on behalf of the Asian members of the Commission, said that he associated himself with the Chairman's tribute to the Special Rapporteur. It was undoubtedly because Mr. Reuter had so skilfully guided them, thanks to his complete mastery of the subject, that the members of the Commission had been able to bring their work on the subject entrusted to him to a successful conclusion. Throughout the discussions he had shown a patience, perseverance and tenacity that reflected his unique personality. More than once his attitude had borne witness to a complete intellectual integrity, which compelled the admiration of all and earned him the warmest congratulations. The task accomplished, thanks to him, held a special place in the Commission's work and would certainly serve the cause of peace and prosperity in the world.

22. Mr. THIAM, speaking on behalf of the African members of the Commission, expressed his gratitude to the Special Rapporteur for the valuable contribution he had made to the Commission's work. The draft articles just completed filled an important gap which it had become necessary to fill as a result of the multiplication of international organizations, the privileged instruments of both universal and regional co-operation. The work accomplished under the Special Rapporteur's guidance would be a great source of inspiration for Africa, where the need for multilateral co-operation was being increasingly felt. The draft articles clearly bore the mark of the principal qualities of their author: simplicity and modesty, often carried to the point of self-criticism; for Professor Reuter had often emphasized his doubts rather than his certainties. He warmly congratulated the Special Rapporteur and expressed the hope that the draft prepared under his guidance would become a convention.

23. Mr. DÍAZ GONZÁLEZ, speaking on behalf of the Latin-American members of the Commission, said that the Commission owed a debt of gratitude to the Special Rapporteur on the completion of ten years of magnificent work on a most important topic. From Mr. Reuter's reports and statements in the Commission, he had learned a great deal, not only about international law, but also about French wit and graciousness. Those reports and statements had contained an element of irony expressed with a finesse that only a person of such profound wisdom and humanity could possess. Mr. Reuter, who had always been a friend of the third world countries, was regarded

with affection in Venezuela and, he was sure, in other Latin-American countries. He felt sure that the articles drafted under Mr. Reuter's guidance would not only become an outstanding convention, but would serve as a basis and inspiration for the Commission's future work.

24. Mr. USHAKOV said that the severity with which he had sometimes judged the Special Rapporteur's work did not in any way affect the friendship and admiration he felt for him. Henceforth, Mr. Reuter's name would always be associated with the branch of international law whose codification and progressive development he had made possible. The convention that should result from the draft articles would be of great importance for the international community, because of the increasingly prominent part played by international organizations in contemporary life.

25. Sir Francis VALLAT said that a debt of gratitude was owed to Mr. Reuter for his ten years' work as Special Rapporteur, which had been exemplary in all respects. His qualities, both as a scholar and as a colleague, had characterized his work and had led the Commission through all the intricacies of the topic entrusted to him. He possessed the ability—essential in a Special Rapporteur—to combine firmness in adhering to the views he believed to be correct with responsiveness to the views of others.

26. Mr. ŠAHOVIĆ associated himself with the congratulations addressed to the Special Rapporteur and drew attention to the contribution which the draft articles would make to the codification and progressive development of contemporary international law. He reminded the Commission that two former members, Mr. Hambro and Mr. Kearney, had been convinced, from the outset, of the need to codify the topic. But their enthusiasm had never been generally shared, and it was to be feared that the draft articles might still be treated with some reserve in the Sixth Commission or at a future codification conference. There was no denying that the draft added a new dimension to the concept of the legal personality of international organizations.

27. Mr. SCHWEBEL joined with the other members of the Commission in congratulating the Special Rapporteur on the completion of the first reading of his excellent draft articles, which were a testimony of his immense learning and superb drafting ability. Mr. Reuter's personal qualities had lent vitality to the Commission's consideration of his topic. He combined an admirable independence and idealism with concern for the role of international organizations in international life, which was an essential quality in any one engaged in the furtherance of international law. He embodied the great qualities of French liberalism and internationalism, and it was to be hoped that the Commission would continue to enjoy his presence for many years to come.

28. Mr. YANKOV said that it gave him great personal pleasure and satisfaction to be able to congratulate the Special Rapporteur on the completion of the first reading of his magnificent draft. His topic was one which expressed new dimensions in international relations and reflected the ever-increasing part played by international organizations in international affairs. He wished to express his admiration for Mr. Reuter's exceptional qualities as a lawyer and teacher, and for his personal attributes of firmness, straightforwardness and intellectual generosity.

29. Mr. VEROSTA associated himself with the congratulations addressed to the Special Rapporteur, whose great work would enrich both legal science and international legislation. Mr. Reuter combined Cartesian clarity with a very sure legal instinct; his personality and deeply human charm gave a special tone to the Commission's discussions.

30. Mr. REUTER thanked the members of the Commission for their kind words and their valuable contributions to the work entrusted to him.

31. To the new special rapporteurs of the Commission he would say that becoming a special rapporteur was rather like taking religious vows: it was essential to have faith. When he had come to the Commission in 1964, he had not really had faith. To be a believer it was, indeed, necessary to have deep moral convictions and unshakeable hope. Members of the Commission sometimes had good reason to wonder whether States would recognize the usefulness of their work. Over the years, his faith had grown stronger, as he had become aware of the value of the Commission and its work. He owed that new awareness to the other members of the Commission and the Secretariat. In the modern world, co-operation had become a real necessity in every sphere, even that of hostilities. It seemed inevitable that a special rapporteur should sometimes have doubts and go through crises, but when he had overcome the difficulties he saw the greatness and nobility of his task.

32. The draft articles of which the drafting had been completed, far from being the product of the Special Rapporteur alone, were the result of the collective work of all the members of the Commission. He could not thank each one of them personally, but there were two he wished to mention. One was Mr. Ushakov, for his enormous capacity for work and his passion for drafting; he was also an opponent, but an honest opponent, anxious to point out the political problems which had to be considered. The other, Mr. Tsuruoka, senior member of the Commission, was among those members who had given him the encouragement he had sometimes needed as Special Rapporteur.

33. Lastly, he warmly thanked present and past members of the Secretariat who had given him their valuable assistance. Devoted to their task and convinced of its usefulness, they had more than once given him comfort.

CHAPTER II. Succession of States in respect of matters other than treaties (A/CN.4/L.315)

A. Introduction

Paragraphs 1–6

Paragraphs 1–6 were approved.

Section A was approved.

B. Draft articles on succession of States in respect of matters other than treaties

ARTICLES C, D, E AND F

Commentary to article C (Transfer of part of the territory of a State)

Paragraph (12)

34. Sir Francis VALLAT proposed that the word “revert”, in the second sentence, be replaced by the word “pass”.

It was so decided.

Paragraph (12), as amended, was approved.

Paragraph (22)

35. Sir Francis VALLAT, referring to the third sentence of the paragraph, said that, in his view, the expression “in an irreproachable condition of viability” did not convey the meaning intended. The word “viability”, in English, meant self-sufficiency, whereas the basic principle to be expressed was that the part of territory concerned must be transferred to the successor State in such a condition that it could reasonably be managed and administered.

36. After an exchange of views in which Mr. DÍAZ GONZÁLEZ, Mr. REUTER, Mr. ŠAHOVIĆ, Mr. SCHWEBEL and Mr. VEROSTA took part, Mr. YANKOV proposed that the third sentence of paragraph (22) be brought into line with the second sentence of paragraph (6); it would then read:

“The basic principle is that the part of territory concerned must be transferred to the successor State so as to leave to the successor as viable a territory as possible in order to avoid any disruption of management and facilitate proper administration”.

It was so decided.

Paragraph (22), as amended, was approved.

37. Mr. SCHWEBEL said it seemed to him that excessive use had been made of underlining, not only in paragraph (22), but throughout the commentaries to articles C, D, E and F; presumably the passages in question would appear in italics in the printed version. Stylistically, that would be most unattractive, and he doubted whether it was really necessary.

38. Mr. VEROSTA and Mr. YANKOV endorsed that view.

39. Mr. REUTER said that, if the Commission decided to delete the underlining in one chapter of the report, it must agree to do so in all the others. He therefore proposed that the Secretariat be asked to review the report as a whole, and to omit such

emphasis except in cases where it was absolutely necessary.

It was so decided.

Paragraph (23)

40. Mr. USHAKOV, referring to the French text, proposed that the expression “*principes équitables*”, in the third sentence of subparagraph (iv), be replaced by “*principes d’équité*”.

It was so decided.

Paragraph (23), as amended, was approved.

Paragraph (25)

41. Sir Francis VALLAT proposed that the last four words of the paragraph, “small parcels of land”, be replaced by the words “small areas of territory”.

It was so decided.

Paragraph (25), as amended, was approved.

The commentary to article C, as amended, was approved.

Commentary to article D (Uniting of States)

Paragraph (6)

42. Mr. REUTER, referring to the first sentence of the French text, said that the word “*viabilité*” was inappropriate in the context; possibly it could be replaced simply by the word “*vie*”.

43. Mr. FRANCIS, supported by Sir Francis VALLAT, said that, in the English text, it would be preferable to retain the word “viability”.

44. Mr. VEROSTA proposed that the word “viability” be replaced, in all language versions, by the word “administration” or its equivalent, since, as was clear from paragraph (7), that was the meaning intended.

It was so decided.

45. Sir Francis VALLAT said that, while paragraph (6) was apparently meant to be a statement of fact, the second sentence, as worded, seemed to be more in the nature of a statement of law. He therefore proposed that the word “pass”, in the second sentence, be replaced by the words “are normally transferred”.

It was so decided.

46. Mr. VEROSTA, supported by Mr. USHAKOV, proposed that in the last sentence of paragraph (6), the expression “constituent States” be replaced by “component parts” and the words “those States” by “those parts”.

It was so decided.

47. Mr. RIPHAGEN proposed, as a consequential amendment, that the term “constituent States”, in the

third sentence, be replaced by the term "predecessor States".

It was so decided.

Paragraph (6), as amended, was approved.

Paragraph (7)

48. Mr. DÍAZ GONZÁLEZ proposed that the words "such as councils and viceroalties", in the second sentence, be deleted.

It was so decided.

Paragraph (7), as amended, was approved.

The commentary to article D, as amended, was approved.

Commentary to article E (Separation of part or parts of the territory of a State) and article F (Dissolution of a State)

Paragraph (3)

49. Mr. REUTER proposed that the word "archivistique", in the third sentence of the French text, be replaced by the words "sur les archives".

It was so decided.

Paragraph (3), as amended, was approved.

Paragraph (4)

50. Mr. REUTER proposed that, in the penultimate sentence of the French text, the phrase "représentant des valeurs culturelles et historiques très élevées autant pour les uns que pour les autres" should be reworded to read "représentant, pour les uns comme pour les autres, des valeurs culturelles et historiques très élevées".

It was so decided.

Paragraph (4), as amended, was approved.

Paragraph (10)

51. Mr. VEROSTA, referring to the first sentence, proposed that the word "Empire" be replaced by the word "Monarchy" and that the words "Austro-Hungarian imperial archives" be replaced by the words "archives of the Austro-Hungarian Monarchy".

It was so decided.

52. Mr. REUTER proposed that the word "archivistiques", in the second sentence of the French text, be replaced by "sur les archives".

It was so decided.

Paragraph (10), as amended, was approved.

Paragraph (12)

53. Mr. VEROSTA pointed out that the correct spelling of the name of the second county mentioned in the fourth sentence was "Vas".

The commentary to articles E and F, as amended, was approved.

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

Chapter II as a whole, as amended, was approved.

54. The CHAIRMAN said that he wished, on behalf of all members, to record the Commission's appreciation of the work of Mr. Bedjaoui, the Special Rapporteur, on the supplementary draft articles on succession of States in respect of State archives.

The meeting rose at 12.40 p.m.

1640th MEETING

Thursday, 24 July 1980, at 10.20 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Also present: Mr. Ago.

Draft report of the Commission on the work of its thirty-second session (continued)

CHAPTER III. *State responsibility* (A/CN.4/L.320 and Add.1-4)

A. *Introduction* (A/CN.4/L.320)

Paragraphs 1-16

Paragraphs 1-16 were approved.

Section A was approved.

B. *Draft articles on State responsibility*

PART 1. *The origin of international responsibility*

Commentary to article 35 (Reservation as to compensation for damage) (A/CN.4/L.320/Add.3)

The commentary to article 35 was approved.

Part 1, as amended, was adopted.

PART 2. *The content, forms and degrees of international responsibility* (A/CN.4/L.320/Add.4)

Paragraph 18

1. Sir Francis VALLAT, referring to the second sentence, suggested that, after the words "new legal relationships", some wording in brackets should be added, to indicate the kind of relationships concerned.

2. Mr. RIPHAGEN (Special Rapporteur) proposed that the additional wording in brackets should read "new rights and corresponding obligations".

It was so decided.

Paragraph 18, as amended, was approved.