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**A/CN.4/SR.1695**

**Summary record of the 1695th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
**1981, vol. I**

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64. Bearing in mind the recommendations of the General Assembly, the Drafting Committee had concentrated on the two sets of draft articles submitted in second reading and, in particular, on the draft articles concerning succession of States in respect of State property, archives and debts. That being so, it had been unable to examine all the articles relating to treaties to which international organizations were parties, and any of the articles on the other topics. The Committee therefore remained seized of those articles, and would have to study them at the Commission's next session.

*The meeting rose at 6.10 p.m.*

## 1695th MEETING

*Tuesday, 21 July 1981, at 11.05 a.m.*

*Chairman:* Mr. Doudou THIAM

*Present:* Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Diaz González, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

### Draft report of the Commission on the work of its thirty-third session

1. The CHAIRMAN invited the Commission to consider its draft report on its thirty-third session, paragraph by paragraph.

#### CHAPTER I. *Organization of the session* (A/CN.4/L.329)

##### Paragraph 1

*Paragraph 1 was adopted.*

##### Paragraph 2

2. Mr. FRANCIS (Rapporteur) noted that the Commission had to decide whether or not to retain the words "the law of the non-navigational uses of international watercourses", which had been placed in square brackets in the last sentence.

3. The CHAIRMAN, referring to the words in square brackets, said the Enlarged Bureau proposed that no new special rapporteur should be appointed at the present session for the topic on the law of the non-navigational uses of international watercourses. The Enlarged Bureau also proposed that the next session should begin on 3 May 1982.

4. Sir Francis VALLAT said he deeply regretted the fact that the Enlarged Bureau had decided not to appoint a new special rapporteur on the topic of the law of the non-navigational uses of international watercourses. The Commission had professed a wish

to further the continuity of its work on that topic, but the decision taken by the Enlarged Bureau would block such continuity. There was no real reason for failing to take a decision to appoint a new special rapporteur. If such a decision could not have been taken early in the session, it should be taken now, at a time when many States Members of the United Nations attached great importance to the question of international watercourses. He was concerned about the decision not to appoint a new special rapporteur because he had at heart the future interests of the Commission, whose capacity to deal with topics of great technical and practical significance was one of the touchstones on which its performance would be judged.

5. Most members had agreed that there was an eminently suitable person to deal with that topic, but the Commission had failed to take advantage of that person's availability and had not appointed him because of the opposition of three members and because of the practice of proceeding by consensus. In his opinion, when a large majority of the members of the Commission wished to follow a particular course, those in the minority should bow to the will of the majority.

6. Mr. NJENGA said he too found it difficult to understand why the Commission should shy away from taking a decision to appoint a new special rapporteur on the topic in question. If it now failed to appoint a special rapporteur, no work could be done on the topic at the following session, and he was not sure how the Commission would be able to justify its decision to the General Assembly. He also agreed with Sir Francis Vallat that it was quite unfair that a few members of the Commission should be able to block a decision favoured by the majority.

7. Mr. SUCHARITKUL said that he wished to associate himself with the views expressed by Sir Francis Vallat and Mr. Njenga concerning the Commission's failure to appoint a new special rapporteur because of the problem of a lack of consensus.

8. Mr. FRANCIS said that, in his opinion, the opposition to the appointment of a new special rapporteur for the topic of the law of the non-navigational uses of international watercourses would not be able to withstand the criticism that it would receive in the Sixth Committee. From his experience as a representative on that Committee, he knew how much significance many countries placed on the study of that topic, and was quite sure that a decision not to appoint a special rapporteur would be a miscalculation of the General Assembly's attitude to the only item on the Commission's agenda that involved people, rather than abstract ideas. It was therefore a matter of deep regret to him that he would be compelled to share the responsibility for such decision.

9. The CHAIRMAN said that, in the course of the discussions within the Enlarged Bureau, it had been pointed out that special rapporteurs had always been

appointed by consensus, never by vote. In the case in point, some members of the Commission had expressed their opposition to the appointment of a special rapporteur, and no consensus had been reached. It was now a matter for the Commission to decide whether it should depart from a practice it had always followed.

10. Mr. TABIBI said that in his twenty years as a member of the Commission he had taken part in the appointment of many special rapporteurs, who had been selected either on the basis of their interest in the topics concerned and the work they had done on them or because they had agreed, as a matter of courtesy, to act as the chairmen of study groups on those topics. Decisions concerning the appointment of special rapporteurs had been taken by vote in the Commission's early days, but the consensus method had emerged later on, a method he had always been opposed to in all United Nations bodies because it was a form of veto that ran counter to the interests of the majority of the Members of the United Nations. The Commission should bear in mind that it would gain time by appointing a new special rapporteur at the present session and that it would also be answerable to the Sixth Committee and the General Assembly for its decision.

11. Mr. USHAKOV said that he deplored the discussion which was taking place and that, if a vote was taken, he would not participate in it.

12. Mr. DÍAZ GONZÁLEZ said that he would not participate in a vote either.

13. Mr. ALDRICH said that, as the newest member of the Commission, he was sorry to have to disagree with Mr. Tabibi, but he had been impressed at the present session by the fact that the Commission placed enormous confidence in its Special Rapporteurs, who had to have the support of all members if they were to succeed in the tasks entrusted to them. In his opinion, the question at issue, more than almost any other, was one on which the Commission's traditions should be followed, and it would be a great mistake to start a new special rapporteur on the difficult road that lay ahead of a rapporteur when the Commission was divided on the matter. Although it would be unfortunate to lose a year's work on the important topic of the law of the non-navigational uses of international watercourses, the Commission would be ill-advised to take a divided decision on the appointment of a new special rapporteur to deal with it.

14. Mr. BARBOZA said that he would not participate in a vote, but he could not reproach other members of the Commission for adopting a position consistent with their profound convictions.

15. The CHAIRMAN noted that some members of the Commission would not participate in a vote on the matter. Moreover, as Mr. Aldrich had pointed out, a special rapporteur appointed under such circumstances would not have the support of all members and would find it difficult to carry out his task, a situation

which would not be in the interest of the Commission. Consequently, circumstances did not appear to favour the appointment of a special rapporteur, and the proposal of the Enlarged Bureau should be adopted.

16. Mr. NJENGA said that he did not subscribe to the view that special rapporteurs must always be appointed by consensus. He therefore hoped that the decision taken by the Enlarged Bureau would not establish a precedent for the appointment of special rapporteurs in the future.

17. Mr. QUENTIN-BAXTER said he thought that the proposal by the Enlarged Bureau was the right one. He was not in favour of divided votes and had even objected to the vote which the Commission had taken at its 1692nd meeting in connection with article 16 (State debt), subparagraph (b), of the draft articles on succession of States in respect of matters other than treaties. The Commission's report should nevertheless reflect the members' concern at the inability to agree on the appointment of a new special rapporteur to deal with a topic that commanded more support in the General Assembly than did any other. The Commission must expect to be criticized for its decision and, in his view, it deserved to be so criticized.

18. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to delete the words that had been placed in square brackets in paragraph 2.

*It was so decided.*

*Paragraph 2, as amended, was adopted.*

Paragraphs 3 to 11

*Paragraphs 3 to 11 were adopted.*

*Chapter I, as amended, was adopted.*

**CHAPTER III. Question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/L.331 and Add.1 and 2)**

**A. Introduction (A/CN.4/L.331)**

Paragraphs 1 to 18

*Paragraphs 1 to 18 were adopted.*

Paragraph 19

19. Mr. REUTER (Special Rapporteur) proposed that, in the 3rd and 4th lines, the words "to renew, through the Secretary-General, its previous invitation to Governments and principal international organizations" be replaced by "to remind, through the Secretary-General, Governments and principal international organizations of its previous invitation".

*Paragraph 19, as amended, was adopted.*

Paragraphs 20 to 41

*Paragraphs 20 to 41 were adopted.*

*Section A, as amended, was adopted.*

**B. Draft articles on treaties concluded between States and international organizations or between international organizations (A/CN.4/L.331/Add.1 and 2)**

PART I (INTRODUCTION) AND PART II (CONCLUSION AND ENTRY INTO FORCE OF TREATIES)

*Commentaries to article 1* (Scope of the present articles) and *article 2* (Use of terms)

*The commentaries to article 1 and article 2 were approved.*

*Commentary to article 3* (International agreements not within the scope of the present articles)

20. Mr. ALDRICH proposed that the words "(Holy See, recognized national liberation movements)" at the end of paragraph (6) should be deleted.

*It was so decided.*

*Paragraph (6), as amended, was adopted.*

*The commentary to article 3, as amended, was approved.*

*Commentaries to article 4* (Non-retroactivity of the present articles), *article 6* (Capacity of international organizations to conclude treaties), *article 7* (Full powers and powers), *article 8* (Subsequent confirmation of an act performed without authorization), *article 9* (Adoption of the text), *article 10* (Authentication of the text), *article 11* (Means of expressing consent to be bound by a treaty), *article 12* (Consent to be bound by a treaty expressed by signature), *article 13* (Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty), *article 14* (Consent to be bound by a treaty expressed by ratification, act of formal confirmation, acceptance or approval) and *article 15* (Consent to be bound by a treaty expressed by accession)

*The commentaries to article 4 and to articles 6 to 15 were approved.*

*Commentary to article 16* (Exchange or deposit of instruments of ratification, act of formal confirmation, acceptance, approval or accession)

21. Mr. REUTER (Special Rapporteur) said that the original text of the article had been amended slightly. Accordingly, the words "instrument of formal confirmation" in the fifth line of the commentary should be replaced by "instrument of an act of formal confirmation", followed by a semi-colon. In the fifth and sixth lines, the words "but the use of this term is no reason for not retaining the expression" should then be replaced by "this term is in harmony with the expression".

*The commentary to article 16, as amended, was approved.*

*Commentaries to article 17* (Consent to be bound by part of a treaty and choice of differing provisions) and *article 18* (Obligation not to defeat the object and purpose of a treaty prior to its entry into force)

*The commentaries to articles 17 and 18 were approved.*

**CHAPTER IV. State responsibility (A/CN.4/L.332)**

**A. Introduction**

Paragraphs 1 to 3

*Paragraphs 1 to 3 were adopted.*

*Section A was adopted.*

**B. Commencement of consideration of Part 2 of the draft articles (content, forms and degrees of international responsibility)**

Paragraphs 4 to 15

*Paragraphs 4 to 15 were adopted.*

*Section B was adopted.*

**C. Consideration of the topic at the present session**

Paragraphs 16 and 17

*Paragraphs 16 and 17 were adopted.*

Paragraph 18

22. Mr. RIPHAGEN (Special Rapporteur) said that the word "intent" in the fourth line of the English text should be replaced by the word "items".

*Paragraph 18, as amended, was adopted.*

Paragraphs 19 to 31

*Paragraphs 19 to 31 were adopted.*

Paragraph 32

23. Sir Francis VALLAT proposed that the general part of the report should contain a paragraph explaining the difficulties encountered by the Drafting Committee as a result of its volume of work. The adoption of such a text would mean that the last sentence of paragraph 32 could be deleted.

24. He also wondered what was to be the fate of the draft articles referred to the Drafting Committee and whether a recommendation on the matter could be made to the Commission as newly-constituted at its thirty-fourth session.

25. Mr. RIPHAGEN (Special Rapporteur) supported the proposal made by Sir Francis Vallat. With regard to the second point, he believed that it would be for the newly-elected Commission to determine what was to be done with the draft articles.

26. Mr. USHAKOV said that it would be difficult to make recommendations in that respect, since the future members of the Commission might submit new texts for consideration by the Drafting Committee. Hence, only the Commission as constituted in the future could decide on that matter.

27. Mr. ALDRICH, supported by Mr. DÍAZ GONZÁLEZ and Mr. REUTER, said that the Drafting Committee still had before it the draft articles in question and only the future members of the Commission could decide otherwise.

*The amendment proposed by Sir Francis Vallat was adopted.*

*Paragraph 32, as amended, was adopted.*

*Section C, as amended, was adopted.*

*Chapter IV, as amended, was adopted.*

**CHAPTER VI. Jurisdictional immunities of States and their property (A/CN.4/L.334)**

Paragraphs 1 to 5

*Paragraphs 1 to 5 were adopted.*

## Paragraph 6

28. Sir Francis VALLAT said that it might be more convenient to record what had happened to the various draft articles referred to the Drafting Committee at the end of chapter VI, rather than in paragraph 6 of the introduction.

29. Mr. USHAKOV proposed that the Commission should authorize the Secretariat to make the necessary changes to the text, with the approval of the Special Rapporteur.

*It was so decided.*

*Paragraph 6 was adopted.*

## Paragraphs 7 to 12

*Paragraphs 7 to 12 were adopted.*

## Paragraph 13

30. Mr. ALDRICH proposed that the order of the words "new five" in the first sentence of the paragraph should be reversed.

*It was so decided.*

*Paragraph 13, as amended, was adopted.*

## Paragraph 14

*Paragraph 14 was adopted.*

## Paragraph 15

31. Mr. ALDRICH proposed that, in the interests of clarity, the words "which remained to be set forth in Part III" should be added in parentheses at the end of the second sentence.

*It was so decided.*

*Paragraph 15, as amended, was adopted.*

## Paragraph 16

*Paragraph 16 was adopted.*

## Paragraph 17

32. Mr. ALDRICH said that the words "he noted" in the first sentence of the paragraph, seemed somewhat out of place. He proposed that the Secretariat and Special Rapporteur should be authorized to make the appropriate changes.

*It was so decided.*

*Paragraphs 18 to 25 were adopted.*

## Paragraphs 18 to 25

*Paragraphs 18 to 25 were adopted.*

*Paragraph 26, as amended, was adopted.*

33. Mr. SUCHARITKUL (Special Rapporteur) said that the second sentence should be divided into two separate sentences, with the first one ending with the words "of the whole subject".

*Paragraph 26, as amended, was adopted.*

## Paragraph 27

34. Mr. USHAKOV said that the inclusion, in footnote 22, of the alternative versions of paragraph 1 of draft article 7 was unnecessary and would simply create confusion.

35. Mr. SUCHARITKUL (Special Rapporteur) said that the revised versions of the draft articles had been based on a lengthy discussion. He had included them in the report in order to give a clear indication of the stage reached in the consideration of the topic and to facilitate the Sixth Committee's consideration of the Commission's report.

36. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) agreed with the view expressed by Mr. Ushakov. The inclusion of the revised versions of the draft articles in the report would tend to create confusion in the Sixth Committee, since it would be assumed that they had been discussed by the Commission, which was not the case. However, he would not object to their retention.

37. Mr. ALDRICH supported the view expressed by Mr. Sucharitul. He noted that the revised versions of the draft articles in question were included only in a footnote, and not in the body of the report itself. However, in the light of the observations made by Mr. Díaz González, it might be preferable to state specifically that the revised versions had not been considered by either the Commission or the Drafting Committee.

*It was so decided.*

*Paragraph 27, as amended, was adopted.*

## Paragraph 28

*Paragraph 28 was adopted.*

*Chapter VI, as amended, was adopted.*

*The meeting rose at 1.10 p.m.*

## 1696th MEETING

*Wednesday, 22 July 1981, at 10.05 a.m.*

*Chairman:* Mr. Doudou THIAM

*Present:* Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitul, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

### Draft Report of the Commission on the Work of its Thirty-third Session (*continued*)

CHAPTER III. *Question of treaties concluded between States and international organizations or between two or more international organizations (concluded)* (A/CN.4/L.331/Add.3)