

Document:-  
**A/CN.4/SR.2559**

**Summary record of the 2559th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
**1998, vol. I**

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

52. The Commission had also agreed that articles 14 and 15 should be merged. The Drafting Committee could consider whether the new article 15 should be formulated in a positive or negative form. It could also consider the relationship between articles 15 and 5 (Attribution to the State of the conduct of its organs), namely, the relationship between the organs of “insurrectional movements” and “territorial governmental entities” of States. Any risk of confusion between the two should obviously be avoided.

53. Numerous questions had been raised about the wording used in new article 15. For example, the word “established” in paragraph 1 indicated that there really was an international practice with regard to insurrectional movements and that there was a threshold at which movements acquired a certain international status. As to whether they should be referred to as “insurrectional movements” or “national liberation movements”, the Drafting Committee could choose between the two terms or even use both, but it would be reminded that there were no longer many national liberation movements in the world today. Anyway, it was not for the Commission to analyse the international status of insurrectional movements. Similarly, the Commission was not called on to consider the issue of the responsibility of such movements in depth, even though they obviously bore responsibility.

54. The Commission had also accepted the principle underlying article 15 *bis*, regarding events that a State subsequently adopted or acknowledged. In view of the situations prevalent in the world today, that provision was absolutely necessary. Mr. Economides had proposed a modification which would be taken into consideration, and Mr. Bennouna had noted that the provision actually covered two different situations, depending on the point at which the State decided that the responsibility that it assumed should begin. However, it did not appear entirely necessary to emphasize the differentiation in the article, which was only supposed to settle the problem of attribution of responsibility.

55. Mr. PELLET said that the Special Rapporteur seemed to be using the term “attribution” in a much narrower sense than usual.

56. Mr. BENNOUNA said that it should be clearly stated that the status of insurrectional movements and national liberation movements was not one of the points that the Commission had studied, despite the personal political and historical sensitivities of its members. The issue was a matter of legal personality. It did not refer to a simple problem of terminology, even though one might hesitate to use the word “insurrectional”.

57. Mr. CRAWFORD (Special Rapporteur) replied that he was using the term “attribution” in the sense used in article 3 (Elements of an internationally wrongful act of a State). As to Mr. Bennouna’s comments, he endorsed them without reservation.

58. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to refer draft articles 9 and 11 to 15 *bis* to the Drafting Committee.

*It was so agreed.*

*The meeting rose at 1.05 p.m.*

## 2559th MEETING

*Wednesday, 12 August 1998, at 12.15 p.m.*

*Chairman:* Mr. João BAENA SOARES

*Present:* Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Operti Badan, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

### Draft report of the Commission on the work of its fiftieth session (*continued*)\*

#### CHAPTER IX. *Reservations to treaties* (A/CN.4/L.562 and Corr.1 and Add.1 and 2 and A/CN.4/L.564)

##### A. Introduction (A/CN.4/L.562)

##### B. Consideration of the topic at the present session (A/CN.4/L.562 and Corr.1 and Add.1 and 2)

1. Mr. DUGARD (Rapporteur), introducing chapter IX of the draft report on reservations to treaties, said that the draft was an accurate reflection of the introduction by the Special Rapporteur on reservations to treaties and the debate in the Commission. Therefore, he urged its adoption.

2. Mr. PELLET (Special Rapporteur) said that he would point out to the secretariat some editorial changes to the draft which would not affect the substance. His only substantive suggestion was that footnote 1 in A/CN.4/L.562/Add.1 should be deleted, as the reference to Japan was inappropriate.

*Sections A and B, as amended, were adopted.*

3. Mr. ROSENSTOCK said that the Special Rapporteur might wish to look at footnote 6 in A/CN.4/L.562/Add.1 to see if it was optimally phrased.

*The meeting rose at 12.30 p.m.*

\* Resumed from the 2546th meeting.