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A/CN.4/SR.738

Summary record of the 738th meeting

Topic:

Law of Treaties

Extract from the Yearbook of the International Law Commission:-

1964, vol. I

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irrevocability should not be a bar to the operation of the *rebus sic stantibus* clause.

70. He had no objection to paragraph 4, which seemed to be in full conformity with the theory of the complementary agreement and of the offer defined by the main treaty. As some members of the Commission had stressed, however, the paragraph could not be strictly applied in the case of a right which derived, not from the main treaty, but from another source of international law.

71. Mr. VERDROSS said he noted, as Mr. Ago had done, that differences of doctrine in regard to paragraph 3 were diminishing at the practical level. For the supporters of the two conflicting theories recognized that a right or faculty conferred on a third State by virtue of a treaty was revocable so long as there was no agreement with the third State. He acknowledged that the right was imperfect so long as the third State had not given its consent, and he accepted the idea underlying paragraph 3. He had some doubts about sub-paragraph (*b*), however, for even if the parties to the treaty had intended to confer an irrevocable right on the third State, since it had not yet accepted the right, they could amend the provisions of the treaty and decide whether the right was revocable or not. Consequently, the question of revocability depended entirely on the existence of an agreement with the third State. He was therefore prepared to accept the provisions of sub-paragraph (*a*), but thought that sub-paragraph (*b*) should be deleted.

72. The case mentioned by Mr. Ago — in which negotiations had been conducted from the outset between the parties to the treaty and the third State, and having asked for a certain right, that State was granted a different right — did not seem to him to come within the scope of article 62. For the article only concerned cases in which the parties to the treaty granted a right to a third State without having negotiated with it; if they had negotiated with the third State, the problem of consent arose from the outset.

73. Mr. PESSOU said that situations like that contemplated in article 62 had, of course, occurred in the past, but they would probably be rather rare in the future; hence the Commission should probably not attach too much importance to an article which might not have any practical application.

74. As Mr. Lachs had pointed out in connexion with paragraph 1, it was for the Commission to prevent that situation from occurring, for it conflicted with the rule stated in article 61. Above all, in order to overcome the difficulty created by such a situation, it would be better to ensure that all the States and interested parties would be present at the negotiations than to provide for the granting of rights by an indirect procedure. It was difficult to imagine, for example, that the Niger, which had been an international river until 1963 and whose new status had been defined by the principal riparian States, could be the subject of a treaty without the participation of one of those States.

75. In his opinion, therefore, neither paragraph 1 nor paragraph 2 — and still less paragraph 3 — was satisfactory in regard to drafting or to the principle laid down. The Commission should not spend any more time on the article, a redraft of which should make it possible to overcome the present difficulties.

The meeting rose at 1 p.m.

738th MEETING

Thursday, 4 June 1964, at 10 a.m.

Chairman: Mr. Herbert W. BRIGGS

Law of Treaties

(A/CN.4/167)

(continued)

[Item 3 of the agenda]

ARTICLE 62 (Treaties providing for obligations or rights of third States) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of article 62 in the Special Rapporteur's third report (A/CN.4/167).

2. Mr. AMADO observed that the discussion was throwing little light on a topic that involved elementary principles of international law. Ranged against each other in the controversy were the thesis of such writers as Rousseau and McNair, who to some extent followed Anzilotti, and the modern thesis upheld by the Special Rapporteur and Mr. Jiménez de Aréchaga, while some members of the Commission had not taken any definite position.

3. It would, of course, be difficult to avoid certain incidental questions, such as the creation of definitive legal situations. There were in fact situations to which the question of irrevocability was not relevant, such as that resulting from the treaty concluded between Brazil and Argentina recognizing the independence of Uruguay,[1] or the situations established by treaties having objective effects, such as certain treaties concerning communications. But cases of that kind were in reality remote from the normal concept of the *stipulation pour autrui*; so without seeking to hinder the development of modern treaty practice, the Commission should be very cautious about them.

4. Rousseau had clearly shown that it was difficult to decide whether the principle of the *stipulation pour autrui*, an institution of municipal law, was applicable in international relations, for it seemed that international practice was usually loath to admit that *pacta in favorem tertiis* could provide not only advantages, but " actual rights ", the expression used in the Special

[1] *British and Foreign State Papers*, Vol. XV, p. 935.

Rapporteur's text.[2] The only case in which international jurisprudence had admitted the right of a third State to maintenance of a provision made in its favour was the judgment by the Permanent Court of International Justice in the *Free Zones* case.[3] But Rousseau and other writers had held that that was an entirely exceptional case, comparable to the case of what had formerly been called " international servitudes ". In its judgment, the Court had regarded Switzerland's right to the free zones as a real right which — having as it were effects *erga omnes*, as against treaty rights which were only valid *inter partes* — was independent of the decisions to which an ordinary convention might be subject.

5. In his opinion the agreement of a third State, or a manifestation of its will, to consent to a treaty between other parties, could not be regarded as irrevocable. The parties to a treaty were always absolutely free to amend or terminate it. However, it might perhaps be preferable for the Commission to finish considering the present series of articles on the law of treaties before taking a decision on the problems raised by article 62.

6. Mr. CASTRÉN said that he thought that, despite the differences of opinion dividing them, some of which concerned important matters, the members of the Commission could agree on a new text which provided a reasonable and practical solution without coming out in favour of any particular theory.

7. Paragraph 4 of the Special Rapporteur's text did not seem to present any problem; the difficulties lay in the subject-matter of paragraphs 2 and 3. He had therefore tried to redraft those two paragraphs taking at least the main comments made during the discussion into account, and proposed that they be replaced by a single paragraph, reading:

" 2. (*a*) A State or States are entitled to invoke a right deriving from the provisions of a treaty to which they are not parties when the parties to the treaty intended to accord the said right to those third States.

" (*b*) Unless the treaty provides otherwise, the said provisions may not be amended or revoked by the parties to the treaty without the consent of the third States which have clearly manifested their intention to invoke them."

8. Sub-paragraph (*a*) of his proposal would replace paragraph 2 of the Special Rapporteur's draft. It referred to a right — which was necessary in his opinion — but not to an " actual " right; it merely stated the indisputable fact that the parties to a treaty could offer to one or more States — or where appropriate to all third States — the possibility of invoking a right deriving from the treaty.The third States were at liberty to avail themselves of that right or to refrain from doing so. There was no need to require a collateral agreement, an accession or some other form of acceptance, or to refer to rejection or renunciation. The third States were also free to choose the time when they would begin to exercise the right.

9. The new draft left open the controversial question of the source of the right and the time when it came into being.

10. Sub-paragraph (*b*) of his proposal dealt with the amendment or revocation of a right offered to third States by the parties to a party. The Commission seemed to be generally agreed that, if the third States had in some way or other accepted the right offered them, their consent would be required for any amendment of the relevant provisions, which was no doubt fair and equitable. So long as the third States had not responded positively to the offer made them, the parties to the treaty were still free, but the position changed as soon as a third State had clearly manifested its will, for it might have taken steps to exercise its right.

11. The right might be restricted or subject to certain conditions; that possibility was provided for in paragraph 4 of the Special Rapporteur's draft. For example, the right might be granted only for a certain period, or the parties might have stipulated resolutory conditions or have reserved the power to revoke or modify the right unilaterally, and those conditions would have to be taken into account by third States wishing to exercise their right. But all such restrictions should be clear from the terms of the treaty itself; third States could not be required to know all the circumstances of the treaty's conclusion or the statements of the parties concerning the treaty, which, according to the Special Rapporteur's text, might even be made after the treaty had been concluded.

12. The CHAIRMAN,* speaking as a member of the Commission, said that members' hesitation over paragraphs 2, 3 and 4 arose from a question of legal theory. Their legal training had inculcated in them rigid concepts of a right and how a right could be created, with the result that their attention had unfortunately been concentrated on the creation of a legal right, whereas the purpose of the article was to deal with the taking up of an opportunity, whatever the name by which it might be called — right, benefit or faculty — by a third State, if the third State genuinely wished to accept the opportunity.

13. In private law, stipulation on behalf of another or the concept of trust had been found serviceable, even if not always theoretically satisfactory from the point of view of legal logic. In international law, past practice and possible future needs suggested that it might be useful to include in the draft on the law of treaties an article setting out a comparable concept, as was done in article 62.

14. There could be no question of the article's having the effect of imposing obligations or benefits on third States; both were entirely optional. It was clear from paragraph 1 that the treaty itself did not create the obligation; it merely provided a means of doing so which the third State might or might not accept. Possibly the French rendering of that paragraph was not altogether free of ambiguity.

[2] Rousseau, C., *Droit international public*, Paris, 1953, p. 53.

[3] *P.C.I.J.*, 1929, Series A, No. 22; *P.C.I.J.*, 1932, Series A/B, No. 46.

* Mr. Briggs.

15. The draft of paragraph 2 might with advantage be modelled more closely on that of paragraph 1. The words "a right provided for" should be amended and the words "should be the means of creating a right" should be substituted for the words "should create an actual right". Paragraph 2 (*b*) should be recast in positive form.

16. On the question of revocation, he took the view that, if the right offered were not taken up by the third State, the parties could revoke it, subject to appropriate conditions, but if the third State had availed itself of the right, there could be no unilateral revocation.

17. References to a right being created by the treaty should be removed from paragraphs 3 and 4. It should be possible to redraft the article leaving aside the theoretical differences of opinion on whether the right was created by the treaty or arose from an offer by the parties which was taken up by another State.

18. Mr. de LUNA said he did not agree with members of the Commission who considered that the principle stated in article 62 should be rejected because its application had led to abuses in the past. Misuse of an institution did not prove that the institution was bad in itself. True, the present trend in international law suggested, as Mr. Lachs had said, that in future all interested States would generally be invited to participate in a treaty affecting them. But even in an ideal international community the procedure provided for in article 62 would still be necessary, for it might well happen that certain States, for political or other reasons, would not wish to be involved in a treaty, but would agree to certain rights being conferred on them by virtue of it.

19. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed with the Chairman that it should not be impossible to devise a satisfactory draft despite the differences of opinion on certain theoretical issues which, in any event, were not very fundamental. Although initially he had set out the provisions concerning obligations and rights in two separate articles, he had subsequently decided to combine them in one article, because they were frequently linked and sometimes correlative. It seemed preferable to maintain the structure he had finally adopted.

20. With regard to paragraph 1, there was general agreement that there could be no question of imposing an obligation under that provision and that its wording provided the necessary safeguards.

21. There was, of course, some difficulty in covering all the aspects of interlocking obligations and rights, but essentially the two elements that must be present were, in the one case, a provision intended to provide a means of establishing an obligation and, in the other case, a provision whose essential purpose was to provide the means of enjoying the right.

22. Whether the treaty provided a means of creating a right or a benefit, all members were agreed that there must be some manifestation of intention to exercise it by the third State, and some members had emphasized that consent under paragraph 2 (*b*) need not possess the formal character of the consent required under paragraph 1.

23. In drafting paragraph 3, he had been largely guided by his conception of the right and by the firm rejection on the part of Judges Altamira and Hurst, in the *Free Zones* case, of the concept of an irrevocable right because it might be prejudicial to the creation of such rights in favour of third States.[4] Perhaps paragraph 3 required some modification in order to show clearly that the parties were entirely free to revoke the right until it had been taken up. If the third State did avail itself of the right, the presumption must be that it was irrevocable unless the treaty provided otherwise, and the onus of making that clear must lie on the parties.

24. One point that might need consideration was what should be the position if a right offered to a group of States was only accepted by one of them. Would it then be revocable *vis-à-vis* the others?

25. Paragraph 4 was concerned with the case in which the exercise of a right was necessarily subject to the observance of certain obligations by the third State. The paragraph had not given rise to serious difficulties, but would need some revision in order to remove the reference to the creation of a right by a provision of the treaty, as suggested by the Chairman.

26. He was glad that Mr. de Luna had touched on the utility of such a provision for treaties concluded in the future. Although there might have been instances in the past of States creating obligations for others in a manner that would not be regarded as acceptable in modern times, it would be dangerous to conclude that because the world had moved into a new era such an article would serve no further purpose. On the contrary, the increasing co-operation between States might have the opposite effect.

27. The Commission might wish to give further consideration to article 62 in the light of its conclusions on article 63.

28. The CHAIRMAN suggested that article 62 be referred to the Drafting Committee.

It was so agreed.

ARTICLE 63 (Treaties providing for objective regimes)

29. Sir Humphrey WALDOCK, Special Rapporteur, said that he had prepared a very full commentary on the highly controversial subject of article 63, concerning which the authorities were very much divided. The possibility of treaties creating objective regimes was one of considerable delicacy, touching as it did on the sphere of international legislation, whereby instruments concluded by a majority could be held to have binding force for the minority. Rousseau and McNair, neither of whom was prepared to accept the notion of a stipulation on behalf of another State in international law, seemed inclined to admit the possibility of treaties creating objective regimes. He himself had felt very hesitant in the matter and shared the previous Special Rapporteur's view that States were unlikely to agree

[4] *P.C.I.J.*, 1932, Series A/B, No. 46, p. 185.

that treaties could, of their own force, create such regimes. Yet there were examples in practice of such regimes coming to be regarded as possessing an objective character, with effects *erga omnes*. Sir Gerald Fitzmaurice had in a sense admitted the notion through the back door, by appearing to allow that there was a general duty upon States to respect the legal relations created between the parties to a treaty, thereby giving it recognition.[5]

30. His own opinion was that only treaties of a particular character could be said to establish an objective regime, and that an essential requirement must be that the parties had some special competence in the matter. At the same time, he was aware that other States were likely to be unwilling to accept such regimes as automatically binding, so that some element of express or tacit recognition would have to be provided for, somewhat on the lines of the provisions included in the articles concerning reservations; he had sought to do that in paragraph 2.

31. If the creation of objective regimes were accepted as a phenomenon of international law, possibly recognition of such regimes was a process analogous to the growth of customary law.

32. He regarded article 63 as progressive and desirable, but would not be surprised if it should give rise to divergent views in the Commission.

33. Mr. PAREDES said that, as he had occasionally done before, he would refer mainly to questions of drafting, some of which affected the substance of the complicated and difficult article 63. He would begin with the title of the article: " Treaties providing for objective regimes ". The term objective was ambiguous and did not suffice to describe the whole subject-matter of the provision. What was the idea it described? Was it the matters on which the right took effect, as opposed to the titular subject of the right? He did not think the Special Rapporteur had intended to refer to that, but rather to the scope or extent of the consequences of the treaty or its effects *erga omnes*. Consequently, the term " objective " was not strictly correct, and not adequate for the very broad subject-matter of the article. That was so even though the Special Rapporteur had very wisely left aside a great accumulation of questions dealt with by the former Special Rapporteur, such as the whole matter of formulating international customs. Nevertheless, there remained a great abundance of legal questions, not all of which had the same content or were of the same nature.

34. Although the establishment of international rivers and waterways and of sea and land areas for common use and other matters of the same kind came within the provisions of paragraph 1, there were other matters which did not appear to come within the scope of that paragraph. There was, for instance, the case of mandates and trust territories which, whatever might be said of them, involved subjective and subordinate conditions, both in the idea that created them and in the practice applied to them. The very instruments which established them referred to the special protection accorded to countries that had not reached a high degree of progress, in order that they might do so. Hence, when dealing with those conditions it was essential to refer to the subjective aspect of the arrangement. He did not consider the provision applicable to the duty to accept the consequences of rights relating to third parties, legitimately established between the parties to a treaty, such as the delimination of frontiers or the cession of territories.

35. Consequently, he found the title inadequate and defective and proposed that it should be amended to read: " Treaties providing for a general regime of rights *in rem* ". The meaning of rights *in rem* had long been well defined in systems of municipal law and in case law: they were rights held without reference to a particular person; it could be said that they were incorporated in and applied to the subject-matter or object of the contract.

36. Incidentally, with reference to certain passages in the commentary, he wished to say that he did not approve of the voluntary and permanent exclusion from the Commission's work of everything relating to an enormous field of immediate future interest, namely, legislation on outer space and the use of atomic energy.

37. In the Spanish text of the commentary he noted that the word " rubrica " was used for the various " rubrics " employed by the previous Special Rapporteur: it should be replaced by the word " enunciado ".

38. Mr. ELIAS said that the Special Rapporteur, in his introductory remarks, had provided the Commission with reasons for rejecting article 63, the subject-matter of which could be covered adequately in articles 62 and 64. The view that article 63 should be deleted was confirmed by what the Special Rapporteur had written in paragraphs (10), (11) and (20) of his commentary on article 62.

39. Mr. EL-ERIAN said that the main difficulty in article 63 arose from the attempt to deal, within the framework of the law of treaties, with a number of complex questions touching on other branches of international law. Paragraph 1 listed matters some of which related to the demarcation of the territory of a State, others to the setting up of an international legal order as a result of the establishment of the League of Nations and the United Nations, and others to territorial settlements and their recognition by other members of the community of nations. Those questions could be described as sensitive spots in international law and the Special Rapporteur had been very ambitious in attempting to deal with so many of them in a single article of his draft.

40. Doctrine, the case-law of international tribunals and State practice provided little guidance as to what constituted an " objective regime ", what matters fell within the scope of that term and which of them belonged to the law of treaties as being effects of treaties, as distinct from those which belonged to other branches of international law.

41. It was obvious that the subject-matter of article 63, in so far as it related to the law of treaties, was closely

[5] *Yearbook of the International Law Commission, 1960*, Vol. II, pp. 72 *et seq.*

bound up with problems of international custom, implied consent, rights *in rem* and their recognition by other members of the international community. In his opinion, it was not advisable to treat those matters purely from the standpoint of the effects of treaties, and he could not share the view expressed by the Special Rapporteur in his commentary, that the problems involved were best dealt with by the method used in article 63.

42. McNair spoke of treaties intended to operate *in rem*, against the whole world or *erga omnes*, and also "dispositive" or "real" treaties. The characteristic feature of the latter, which might be treaties of cession or boundary treaties, was that they recognized or granted or transferred "real" rights — rights *in rem*. The same author discussed the status of the great artificial waterways of the world and drew no distinction between one canal and another. He treated them as a general subject belonging to that of the territory of States. He rejected the concept of an "objective regime" and, in his search for a juridical basis for the status of international waterways, had said:

> "Some might find the source of this rule in the public law theory, that is to say, that the groups of States that were the parties to the original treaties were acting in a semi-legislative capacity for the whole world. We incline, however, to think that a more attractive source is to be found in the inherent purpose of these waterways, namely to facilitate communications between States, and that upon the occasion of the opening of such a waterway there occurs a legal process recognized by the private law of some countries, namely a dedication *orbi et urbi* of some natural advantages or facilities, with the intention that the securing of these facilities for the public use is effected by their becoming a part of the public law of the world." [6]

The complex character of that example, which constituted only one of ten or more given in paragraph 1, showed how controversial a field the Commission would be entering if it included in its draft an article such as article 63.

43. Oppenheim had been very sceptical regarding treaties of a so-called "objective" character, and had written: "The question arises whether in exceptional cases third States can acquire rights (and become subject to the duties connected therewith) by giving their express or implied consent to the stipulations of such treaties as were specially concluded for the purpose of creating such rights, not only for the contracting parties but also for third States". After giving a number of examples relating to the Panama Canal and to boundary settlements, he had concluded: "The question must be answered in the negative.[7] "

44. Sir Gerald Fitzmaurice, the previous Special Rapporteur, had shown no inclination to favour the theory of objective regimes and had emphasized that the articles devoted by him to the subject described a process rather than laid down a rule. And he had been working within the framework not of a draft convention, but of a code, where it was possible to deal with matters which belonged to other branches of international law. The Commission should not depart from the principle it had adopted in connexion with rules of *jus cogens*, that subjects which did not come within the purview of the law of treaties must be excluded.

45. There were two specific points on which he wished to comment briefly. The first was mandates and trusteeships considered as a part of the international legal order, in connexion with the quotations given in paragraph (12) of the commentary from the opinions and judgment of the International Court of Justice in the South West Africa cases. The court had not pronounced on the question of objective regimes. The definition of mandate and trusteeship regimes and their legal effects depended on the interpretation of the League of Nations Covenant and the United Nations Charter — a question which could not be adequately considered within the scope of the law of treaties.

46. The second point was inter-oceanic canals, on which he must reserve position, as he did with regard to the international regimes applicable to the Suez, Panama and Kiel canals. In the *Wimbledon* case,[8] the Permanent Court of International Justice had in some respects assimilated artificial waterways to natural waterways — in other words, straits. It had inclined to the view that customary international law supplemented conventional law on the regime of artificial waterways. He could not accept the view, which appeared to have been adopted by the Special Rapporteur in his commentary, that the various artificial waterways were subject to separate regimes. Although details of administration might differ from one canal to another according to the provisions of the conventions governing them, all had two fundamental features in common: the first was that they were dedicated to international navigation and the second was that the rights of the State in whose territory and under whose jurisdiction the waterways lay must be preserved. At a recent Congress of the International Law Association, Professor Baxter, the rapporteur on the topic of inter-oceanic canals, had submitted a series of draft articles [9] based precisely on the fundamental assumption that, whatever differences of detail there might be, as means of international communication, the various inter-oceanic canals were subject to the same regime. Any attempt to claim that there existed a difference in regime between one inter-oceanic canal and another, when all had the same object and served the same purpose, would be contrary to the principle of sovereign equality of States. He therefore reserved his position regarding the distinctions made by the Special Rapporteur between the Constantinople Convention of 1888 relating to the Suez Canal,[10] and the treaties dealing with other inter-oceanic canals.

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[6] McNair, *The Law of Treaties*, 1961, p. 266.

[7] Oppenheim, *International Law*, eighth edition, 1955, pp. 926-927.

[8] *P.C.I.J.*, 1923, Series A, No. 1.

[9] See Baxter, R. R., *The Law of International Waterways*, Harvard, 1964, pp. 343 *et seq.*

[10] *British and Foreign State Papers*, Vol. LXXIX, p. 18.

47. He agreed with Mr. Elias that it would be advisable to drop article 63 altogether. The best method of dealing with the subject would be to include a passage in the commentary drawing attention to some of the objective effects of treaties and to the difficulty of dealing, within the scope of the law of treaties, with a matter that was closely bound up with other branches of international law. When the Commission came to examine article 64, it could consider whether the reservation it contained was not sufficient to dispose of what the Special Rapporteur, in paragraph (3) of his commentary, called the "admittedly difficult and controversial question" dealt with in article 63.

48. Sir Humphrey WALDOCK, Special Rapporteur, said that it had been far from his intention, in paragraph (10) of his commentary, to make any distinction between one canal and another; he had not taken any absolute position with regard to the differences that might exist between one international waterway and another.

49. Nor could he agree that he had gone into questions outside the scope of the law of treaties; in article 63 he had dealt with treaties and their legal effects. It was perhaps unfortunate that certain of the treaties which set up regimes of the type envisaged in article 63 related to inter-oceanic canals, which were the subject of political controversy.

50. Mr. VERDROSS said that, in principle, he approved of the text of article 63. It covered cases which had occurred in practice and remained topical; for example, by the Antarctic Treaty,[11] a group of States had created a demilitarized regimes which in principle was valid for all States if they did not protest against it. The article was so worded as to avoid the difficulties inherent in the theory of rights *in rem*. Moreover, it was in no way revolutionary, since it was entirely based on the idea of consent; it was solely concerned with the application to special situations of principles already accepted by the Commission.

51. With regard to the drafting, it would be better to delete the words "expressly or impliedly" in paragraph 2 (*a*), so as to bring the text into line with that of other articles. In paragraph 2 (*b*) it would be enough to say "A State not a party to the treaty, which does not manifest its opposition to the regime..." since the idea of protest was included in that manifestation of opposition. At the end of that sub-paragraph, the word "impliedly" seemed superfluous; the essential point was that the State accepted the regime, and there was no need to specify the manner in which it did so.

The meeting rose at 12.20 p.m.

[11] United Nations *Treaty Series*, Vol. 402, p. 72.

739th MEETING

Friday, 5 June 1964, at 10 a.m.

Chairman: Mr. Herbert W. BRIGGS

Law of Treaties
(A/CN.4/167)
(continued)

[Item 3 of the agenda]

ARTICLE 63 (Treaties providing for objective regimes) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of article 63 in the Special Rapporteur's third report (A/CN.4/167).

2. Mr. de LUNA congratulated the Special Rapporteur on having found, for such a difficult subject, accurate and felicitous formulas which corresponded to the true position in international law. He approved of the principle underlying article 63, which dealt with a particular application of article 62 — the case of a localized regime whose purpose was of general interest.

3. Such a regime was not precisely a *jus in rem*. For although a *jus in rem* had effects *erga omnes*, those effects were not necessarily desired, and not always even foreseen, by the parties; they were produced automatically, regardless of whether the parties wanted them or whether third States consented. For example, if a State ceded a territory to another State by treaty, it would be useless for a third State to claim that the first State must continue to assume responsibility for that territory.

4. As the Special Rapporteur had pointed out, article 63 did not apply to multilateral conventions of general interest; they were a separate case.

5. Article 63 stated rules similar to those in article 62, but in paragraph 2 (*b*) it added a new rule under which consent was presumed if third States remained silent for a certain length of time. Strictly speaking that was no innovation, either for the Commission or in international practice; many treaties concluded by the specialized agencies of the United Nations contained such clauses. In municipal law the presumption attached to the silence of the authorities was intended to protect the citizen againt administrative delays. But that presumption was often a terrible trap. He himself was reluctant to accept silence as giving consent, but that should not be taken as a basic objection on his part.

6. Article 63 purported to settle cases of which there were instances in practice, such as the Antarctic Treaty,[1] to which Mr. Verdross had referred. It did not confer a right or impose an obligation on a third State without its consent, any more than article 62. The basis of

[1] United Nations *Treaty Series*, Vol. 402, p. 72.