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**A/CN.4/SR.1584**

**Summary record of the 1584th meeting**

Topic:  
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# INTERNATIONAL LAW COMMISSION

## SUMMARY RECORDS OF THE THIRTY-SECOND SESSION

*Held at Geneva from 5 May to 25 July 1980*

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### 1584th MEETING

*Monday, 5 May 1980, at 3.25 p.m.*

*Acting Chairman:* Mr. Milan ŠAHOVIĆ  
*Chairman:* Mr. C. W. PINTO

*Members present:* Mr. Barboza, Mr. Díaz González, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

#### Opening of the session

1. The ACTING CHAIRMAN declared open the thirty-second session of the International Law Commission.

#### **Tribute to the memory of Marshal Josip Broz Tito, President of the Socialist Federal Republic of Yugoslavia**

2. The ACTING CHAIRMAN invited the members of the Commission to pay tribute to the memory of President Tito, the founder of the Socialist Federal Republic of Yugoslavia and a man who had fought throughout his long life as a revolutionist and a patriot for the independence of his country and for the liberty, fraternity and unity of its nations. He had devoted all his strength to the struggle for social justice and socialism, for the liberation of peoples oppressed by colonialism, for peace and non-alignment, for equality and co-operation and for peaceful co-existence. He had firmly believed in the purposes and principles of the Charter of the United Nations and in the historic mission of the organization and had always stressed the need to strengthen the role of international law and ensure strict observance of its rules. In 1963, President Tito had actively supported the initiative that had led to the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.<sup>1</sup> With President Tito's death, the world had lost an indefatigable fighter and an ardent supporter of the search for new solutions to meet the needs of the modern world.

<sup>1</sup> *Official Records of the General Assembly, eighteenth session, Plenary meetings, 1251st meeting, paras. 1-29.*

*On the proposal of the Acting Chairman, the members of the Commission observed a minute of silence.*

3. The ACTING CHAIRMAN said that, as a Yugoslav, he wished to thank the members of the International Law Commission for the tribute paid to the memory of President Tito.

#### Statement by the Acting Chairman

4. The ACTING CHAIRMAN said that, in resolution 34/141, concerning the report of the Commission on the work of its thirty-first session, the General Assembly had expressly recognized:

the importance of referring legal and drafting questions to the Sixth Committee, including topics which might be submitted to the International Law Commission, thus enabling the Commission further to enhance its contribution to the progressive development of international law and its codification,

something which seemed to indicate that, in its concern to participate more effectively in the work of the Commission, the Sixth Committee was showing increased interest in the question of methods of considering the Commission's reports.

#### Election of officers

*Mr. Pinto was elected Chairman by acclamation.*

*Mr. Pinto took the Chair.*

5. The CHAIRMAN thanked the members of the Commission for the honour they had done him in electing him as Chairman for the thirty-second session.

6. Since he found it daunting to speak to the members of the Commission about matters of international law, he had decided to quote Wilfred Jenks, who had written in an article entitled "Ideal and idealism in international law" that:

Practical men . . . know from life that men live by their visions and that, while an imperfect vision may lead astray, where there is no vision the people perish.<sup>2</sup>

Referring to ideals, Mr. Jenks had gone on to say that:

If international law is concerned with these things it matters greatly; it becomes a vital factor in the shaping of the human future. If international law regards these things as beyond its purview, it matters much less. It may regulate the life of states but

<sup>2</sup> In *The Japanese Annual of International Law*, 1972 (Tokyo), No. 16, p. 3.

remains of small account in the lives of men. This is the scale of things by which we must judge whether idealism in international law should be rejected as an illusion unworthy of the trained intellect or cherished as the vital energy without which the law cannot fulfil its mission in the service of mankind. So stated the choice becomes a simple one for those who have not lost faith in human destiny.<sup>3</sup>

7. Those thoughts were offered for contemplation in the hope that, although the Commission was meeting in unusually troubled times, its work would be crowned with success.

*Mr. Calle y Calle was elected first Vice-Chairman by acclamation.*

*Mr. Thiam was elected second Vice-Chairman by acclamation.*

*Mr. Verosta was elected Chairman of the Drafting Committee by acclamation.*

*Mr. Yankov was elected Rapporteur by acclamation.*

### **Adoption of the agenda (A/CN.4/326)**

*The provisional agenda (A/CN.4/326) was adopted unanimously.*

### **Organization of work**

*The Commission decided to begin its work by considering item 3 of its agenda (Question of treaties concluded between States and international organizations or between two or more international organizations).*

*The meeting rose at 4.15 p.m.*

<sup>3</sup> *Ibid.*, p. 6.

## **1585th MEETING**

*Tuesday, 6 May 1980, at 11.50 a.m.*

*Chairman: Mr. C. W. PINTO*

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

### **Question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/327)**

[Item 3 of the agenda]

### **DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR**

1. The CHAIRMAN invited the Special Rapporteur to introduce his ninth report on the question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/327).

2. Mr. REUTER (Special Rapporteur) said that his ninth report completed the submission in first reading of the draft articles adapting the articles of the Vienna Convention on the Law of Treaties<sup>1</sup> to the special case of treaties concluded between States and international organizations or between two or more international organizations.

3. He had not considered it necessary to propose articles concerning final provisions, since it was customary to leave the task of preparing those articles to the conference responsible for adopting the draft convention. Nevertheless, he had proposed a draft article corresponding to article 66 of the Vienna Convention, one which, although it was contained in the body of the Convention, could, by virtue of its subject-matter, be considered as a final clause. The Commission would therefore have to decide whether article 66 of the Vienna Convention should be transposed to the draft articles. The other articles proposed to the Commission did not appear to present any major problems. Some of them (articles 61, 64, 68, 71, 72, 75 and 80) did not differ from the corresponding articles of the Vienna Convention: most of the others (articles 65, 69, 70, 74, 76, 77, 78 and 79) entailed only minor drafting changes; and only a few articles (62, 63, 67 and 73) involved questions of principle, some of which had already arisen in connexion with other articles.

ARTICLE 61 (Supervening impossibility of performance)

4. Mr. REUTER (Special Rapporteur) introduced draft article 61 (A/CN.4/327) which read:

#### *Article 61. Supervening impossibility of performance*

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

<sup>1</sup> For the text of the Convention (hereinafter referred to as the "Vienna Convention"), 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. 287.