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Summary record of the 1452nd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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33. Again, a distinction had to be drawn between consent and waiver. The commentary should point out that consent given after the commission of the act in effect constituted a waiver. Consent would preclude the wrongfulness of the act, whereas waiver would simply constitute a mitigating circumstance.

34. He supported the proposals made by Mr. Quentin-Baxter earlier in the meeting and by Mr. Tsuruoka (A/CN.4/L.291), but the Drafting Committee might wish to consider the advisability of retaining the phrase "if it is established", employed by Mr. Tsuruoka. Such a form of words, if used in article 29, would have to be used in every article dealing with exceptions and would become an evidentiary rule rather than a substantive norm.

The meeting rose at 6.10 p.m.

1541st MEETING

Tuesday, 29 May 1979, at 11.45 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Bedjaoui, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Filling of casual vacancies of the Commission (article 11 of the Statute) (A/CN.4/317 and Add.1 and Add.1/Corr.1 and Add.2)

[Item 1 of the agenda]

1. The CHAIRMAN announced that, at a private meeting, the Commission had elected Mr. Jens Evensen, of Norway, Mr. Boutros Ghali, of Egypt, and Mr. Julio Barboza, of Argentina, to fill the vacancies caused by the election, on 31 October 1978, of Mr. Roberto Ago, Mr. Abdullah El-Erian and Mr. José Sette Câmara as judges of the International Court of Justice.

2. Telegrams would be sent immediately to the three new members of the Commission inviting them to take part in its work.

The meeting rose at 11.50 a.m.

1542nd MEETING

Wednesday, 30 May 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Also present: Mr. Ago.

State responsibility (*continued*)* (A/CN.4/318 and Add.1–3, A/CN.4/L.291, A/CN.4/L.292)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY MR. AGO (*continued*)

ARTICLE 29 (Consent of the injured State)[1] (*continued*)

1. Mr. PINTO said that the question had been raised of the appropriateness of the term "injured State", which appeared in the title of draft article 29. For his part, he had no difficulty with that term, since, in his view, it was used in its factual, as opposed to its legal, sense to refer to a State that had been injured in fact but might not be held to have been injured in law. So far as the term "consent" was concerned, however, he continued to think that it required some qualification to make it clear that consent must be explicit and freely and lawfully given. He was prepared to accept the addition of the word "valid", provided that it was understood to cover those elements; if not, then some other wording should be found.

2. He agreed that the draft article in its present form should be restrictively interpreted and also that the order of its two provisions should be reversed, so that the exception preceded the general rule.

3. In respect of draft article 29, he had already raised a question (1538th meeting) concerning the relationship between the concepts of wrongfulness and responsibility. In that regard, he would be grateful for clarification on three points, the first of which concerned the connexion between the wrongful act and the consequences, or effects, of the wrongfulness. If consent to a wrongful act was given in accordance with the terms of article 29, should such consent, and therefore responsibility, be deemed to apply to all the consequences that flowed from the act in question, or only to such consequences as could reasonably be foreseen by the State which would otherwise have been injured? Assuming for example that State A installed a nuclear plant on the territory of State B on the specific understanding that there would be no disposal of radioactive waste on the latter's territory, and assuming that an official of State B subsequently authorized such disposal and that damage was caused thereby, it might be held that there was valid consent to the extent that the official concerned was competent in the matter, but the question remained whether, in the circumstances of the case, such consent should

* Resumed from the 1540th meeting.

[1] For text, see 1537th meeting, para. 25.

apply to all the consequences flowing from the disposal.

4. Secondly, if responsibility was extinguished, did the same apply to the wrongfulness? Supposing for instance that State A occupied State B in breach of its obligations to State B, and that State B and any other States concerned had given their consent to such occupation, could it then be said that State A was exonerated from responsibility? Supposing, moreover, that State A had gained by the occupation in terms, for instance, of securing its borders or extending its markets, should State A not be held responsible for any adverse effects on State B resulting from the occupation?

5. Lastly, he considered that the scope of the exception provided for in the second sentence of draft article 29 would be unduly narrowed by confining it specifically to peremptory rules of international law, and that it might therefore be advisable to broaden the exception somewhat. In that connexion, he drew attention to the Convention on International Liability for Damage caused by Space Objects,[2] which provided for absolute liability in the event of damage caused to the surface of the earth. Members would note that article VI, paragraph 2, of that Convention, which dealt with cases where exoneration from liability would not be granted, made reference to international law "including, in particular, the Charter of the United Nations".

6. Mr. SUCHARITKUL endorsed the concept underlying draft article 29 but wondered whether it would not be better to define in more precise terms the consent required to preclude the wrongfulness of an act that would otherwise be termed an internationally wrongful act. Like Mr. Jagota, he believed that the consent of the State formed the basis both of the jurisdictional competence of international bodies and of bilateral or multilateral agreements among States. In his opinion, the consent of the State was directly or indirectly the point of departure for any international obligation, and the rules of international law were founded essentially on the concept of the consent of States.

7. First of all, it was important to distinguish clearly between two closely linked legal concepts, namely, consent and waiver. Consent precluded the responsibility of the State committing the act to the extent that it precluded the wrongfulness of that act. Waiver, on the other hand, precluded neither wrongfulness nor responsibility; it was merely the expression of the injured State's intention not to invoke responsibility by taking legal action to obtain reparation.

8. Secondly, he agreed with Mr. Tsuruoka (1540th meeting) that the conditions governing the validity of the consent must be spelled out. In that connexion, the time at which the consent was expressed was of paramount importance. However, it was not always easy to establish that time with precision, and doubts could arise as to whether the consent had been given beforehand or concurrently. For example, when Thailand had given its consent to the passage of Japanese troops through its territory during the Second World War, the Japanese troops had already landed in the southern part of the country. Nevertheless, none of the Governments that had subsequently held office in Thailand after the war had invoked that circumstance in order to claim that the consent had been invalid.

9. The scope and duration of the consent were also of great importance. For example, if a State gave its consent for the commercial aeroplanes of another State to fly over its territory, it was unlikely that that consent would also cover the air transport of troops or military equipment. In the case of consent by a State to the stationing of foreign troops on its territory, the duration of the consent was very important, since it determined the duration of the period in which troops could legally be stationed there. The Government of the Netherlands had consented to foreign troops being stationed on Indonesian territory and, when Indonesia had become independent, it had been necessary for it to give its consent, since it had not been possible to assume that the successor State would continue to consent to the presence of foreign troops as authorized by the predecessor State.

10. Finally, he believed, as did Mr. Pinto, that no difficulties arose with regard to the rules of *jus cogens*, which could not be derogated from by mutual consent. However, he wondered whether there were not other basic rules of international law which could not be derogated from either, even with the consent of the other State. He wondered, for example, whether certain resolutions of the General Assembly and the Security Council of the United Nations did not give rise, for all Member States, to obligations of such a nature that a breach of those obligations constituted an internationally wrongful act.

11. Mr. SCHWEBEL said that, as pointed out in paragraphs 57 and 74 of Mr. Ago's report (A/CN.4/318 and Add.1–3), the fact that a State consented to conduct by another State that would otherwise have been a breach of an international obligation of the latter State towards the former State led to the formation of an agreement to avoid or suspend the obligation. However, only consent given by a subject of international law could produce that effect, which was why consent given in a Calvo clause of a contract between an alien and a State did not operate to deprive the State of which the alien was a national of its right to extend diplomatic protection.

12. Fundamental to Mr. Ago's thesis was the proviso that, where a rule of international law allowed of no derogation and could not be modified by agreement between the parties, the consent of the injured State did not nullify or suspend the obligation in question. That gave rise to the dilemma to which Sir Francis Vallat had referred at the 1538th meeting: if it was agreed that the paramount rule of *jus cogens* was the rule embodied in Article 2, paragraph 4, of the Charter

[2] General Assembly resolution 2777 (XXVI), annex.

of the United Nations and that that rule, being *jus cogens*, permitted of no derogation, how was it possible to explain the example given in Mr. Ago's report, namely, that of consensual derogation from the rule that barred the entry of foreign troops into a State's territory? In his opinion, the answer might be that, if foreign forces entered the territory of a State with the latter's consent, they did so in support of or in keeping with the maintenance of the consenting State's territorial integrity or political independence. That would normally, although not invariably, be the case. If, therefore, such consent was genuine and authorized, there should be no problem, unless the consent violated other valid norms of international law, norms that were not perhaps recognized as core principles of *jus cogens* but none the less had status in international law.

13. To take the example cited by Mr. Verosta (1540th meeting) of the entry of Russian troops into Hungary in 1849, according to the international law of those days that entry was more defensible than the entry into Hungary of troops some 100 years later, since the sovereign power, Austria-Hungary, had given its consent. The Hungarians, however, had not done so and, to the United States, the leaders of the revolution of that day had been heroes. The term "self-determination" had not been current then, but the principle had been very much alive.

14. One of the most difficult problems of modern international law and relations was reconciling the right of the Government of a State to call in foreign troops with the right to self-determination. That was particularly so in a world where certain movements that claimed to be fighting for self-determination were actually representative of or fuelled by foreign forces, something which in itself amounted to an assault on the territorial integrity and sovereignty of the State and on the principle of self-determination. Clearly, however, the Commission could not settle such a vexed problem, and in general terms the thesis advanced by Mr. Ago in his report and reflected in draft article 29 was sound.

15. The question had rightly been raised whether the conduct to which the State consented could injure third States. That was a matter which related to the submission that responsibility could not be exclusive. If, for example, State A called on State B for assistance in repressing a persecuted racial minority, even if the consent of State A precluded any claim of aggression, the joint responsibility of States A and B for genocide could not be avoided since a violation of a rule of general international law and of a rule of *jus cogens* was involved. Paragraphs 73 and 74 of Mr. Ago's report gave further examples which supported the sound principle that the consent of the States immediately concerned should not prejudice the rights of third States.

16. Lastly, with regard to the need for consent to be genuinely and validly given, there was probably little to be gained by qualifying the word "consent". Nevertheless, the manner in which Mr. Tsuruoka's amendment (1540th meeting, para. 4) sought to do so was acceptable, although he would suggest that it might be slightly reworded along the following lines:

> "If it is established that its valid and explicit consent has been given by a State to an act of another State which, in the absence of such consent, would be a breach of an international obligation of the latter to the former State, that consent precludes the wrongfulness of the act in question. However, this effect shall not ensue if the obligation arises out of a peremptory norm of general international law."

17. Mr. USHAKOV said he still thought that the problem of responsibility did not arise in article 29. However, if there was no wrongful act, it was not, as he had thought initially, because a State released another State from an obligation towards it by waiving its right to require the fulfilment of that obligation, but because there was an agreement between the two States to derogate from the rule of international law that gave rise to the obligation. Thus, if the presence of foreign troops in the territory of a State did not constitute a wrongful act, it was not because the State had given its "consent" but because it had concluded with another State an agreement which, moreover, established in very precise terms the conditions under which the foreign troops could be stationed on that territory. Such an agreement constituted a derogation from the rule of international law whereby all States were obliged to refrain from sending troops into the territory of another State. Since that obligation no longer existed, the presence of foreign troops in the territory of the State was not wrongful.

18. Consequently, the problem posed in article 29 was not one of responsibility but one of derogation from an obligation of general international law by an agreement between two or more States. The problem was very complex, and it would be futile to try to deal with it in a single article. It was impossible to derogate from certain obligations of international law, not only when those obligations derived from rules of *jus cogens* but also, for example, when they derived from a restrictive multilateral treaty, since, in the latter case, the obligation was binding on all parties to the treaty, and, according to article 20 of the Vienna Convention,[3] could be derogated from only with the agreement of all parties. The question also arose in the case of certain bilateral treaties and certain customary rules of international law. The real problem was therefore one of the validity of a derogation, by means of an agreement, from an obligation under international law.

19. Mr. VEROSTA formally proposed that the title of article 29 should be replaced by a title reading: "*Volenti non fit injuria*".

20. With regard to the article itself, he supported the text submitted by Mr. Tsuruoka, but suggested the insertion, after the first sentence of that text, of a sentence reading: "The consent so given shall not

[3] See 1533rd meeting, foot-note 2.

violate the rights of third States without their consent."

21. Mr. SCHWEBEL said he accepted entirely that the essence of the matter with which the Commission had to deal was agreement between the States immediately concerned. None the less, it seemed to him that Mr. Ago had taken the right approach in drafting an article that spoke not of agreement but of consent, and that such an article had a place in the codification of the law on State responsibility.

22. Moreover, he considered that, in that context, the word "consent" was more precise than "agreement", since in some cases what was involved was more in the nature of a unilateral contract whereby, under municipal law, an act was exchanged for a promise rather than a promise for a promise. For example, if the customs officers of State A sought and obtained permission from the customs officers of State B to cross the border in order to apprehend a suspected drug trafficker, the act was the raising of the customs barrier by the customs officers of State B, while the promise was that of the customs officers of State A to enter the territory of State B and then leave. That comment was related to Mr. Ushakov's point that permission to enter the territory of a foreign State must be specific and restricted. A number of other examples could be cited, some of which concerned the more sensitive area of the entry of foreign armed forces into the territory of a State. Not many years previously, the authorities of a State had sought and obtained the assistance of another State in restoring to power their president, who had been the victim of a *coup d'état* by a group of non-commissioned army officers. It was doubtful whether, in that case, there had been any written agreement setting forth the rights and responsibilities of the two States concerned; what had taken place was far more likely to have been in the nature of a unilateral contract. In his view, therefore, the nature of consent should be cast in broader terms. The consent must be explicit, but it need not invariably be written, and it was by no means certain that it must constitute the exchange of a promise for a promise.

23. If he had understood correctly, Mr. Ushakov had said that it was possible to derogate from peremptory rules of international law by means of an agreement. His own understanding, however, was that any such rule was by definition not open to derogation. He would therefore be grateful for clarification on that point.

24. Lastly, he had considered including a reference to third States in his proposed form of wording but had decided against doing so, since Mr. Tsuruoka's amendment referred to a "breach of an international obligation of the latter State towards the former State", which made it plain that the rights of third States were not affected. Some more explicit form of wording might, however, be desirable.

25. Mr. THIAM wondered whether it was necessary to spell out, in the text of article 29, that consent must be valid or validly expressed, since that seemed self-evident. It was impossible to define all the conditions and circumstances under which consent could be expressed. In his opinion, the validity of the consent was a point of fact to be determined by the court.

26. He fully appreciated the distinction made by Mr. Ago, in paragraph 72 of his report, between prior consent—the only valid form of consent—and consent after the event, which was in reality simply a waiver of the right to invoke the responsibility arising from the wrongful act. However, he found it difficult to see how consent could be concurrent with the act in question.

27. Mr. JAGOTA could not agree with Mr. Thiam's observation that it was unnecessary to qualify the term "consent" by the use of an adjective. For the guidance of Governments, legal advisers and the courts, it would be useful to spell out the elements of the consent required to be given under article 29, since such a course would help to ensure restrictive interpretation of the concept of consent in specific cases and would also facilitate consideration of the text of the article by the Sixth Committee.

28. He therefore wished to propose a new formulation of article 29 (A/CN.4/L.292), which was essentially a redraft that incorporated the proposals made by Mr. Tsuruoka (1540th meeting, para. 4) and by Mr. Verosta (para. 20 above):

Consent by the State

"The valid and explicit consent given by a State prior to the commission of an act of another State, which would otherwise be a breach of its international obligation towards the former State, precludes the wrongfulness of the act in question. The consent so given shall not violate the rights of a third State without the latter's agreement. Nor shall such an effect ensue if the international obligation concerned arises out of a peremptory norm of general international law."

29. In preparing his proposal, he had kept within the scope of the set of draft articles, which dealt exclusively with State responsibility for the internationally wrongful act of a State. It was not a comprehensive code covering State responsibility for acts which were not wrongful but none the less caused damage, something that was a separate subject and one which should be considered by the Commission only after it had completed the present topic. For the time being, it was not possible to examine such matters as absolute responsibility, responsibility based on fault, or the method of payment of compensation.

30. It was also extremely important that the commentary to the article should point out that consent given by a State *after* the commission of the internationally wrongful act by another State amounted to *waiver* of its rights or remedies. Of course, it was always possible for the Commission to decide at a later stage whether a separate article on waiver was required, but it was imperative that a distinction

should be drawn in the commentary between consent and waiver. Waiver was simply a renunciation of rights or remedies, and it did not affect the wrongfulness of the act. Consequently, it was not covered by the terms of draft article 29.

31. The commentary should then proceed to state that the phrase "valid and explicit consent" meant that, while giving its consent, the State was not under any duress, that the consent was not vitiated by error, fraud, corruption or other vices, that the consent was given by the proper authorities of the State competent to give such consent for the purposes of international law, that the consent would be restrictively interpreted with respect to its scope, and that there were no (well-known) constitutional or international prohibitions on the giving of that consent.

32. Mr. SCHWEBEL said that the answer to the question why a set of draft articles on State responsibility should include an article such as article 29, which did not set forth a rule of State responsibility, was surely that the article related to a vital exception from application of the principle of State responsibility, and it was therefore entirely appropriate to deal with a matter of that kind.

33. He fully agreed with the suggestions made by Mr. Jagota, with the possible exception of the reference to constitutional restrictions on consent. If such a proviso were to be included in the commentary, it would be preferable, by analogy with the Vienna Convention, to speak of "notorious" constitutional restrictions.

34. Mr. USHAKOV, referring to the first part of draft article 29, namely, "the consent given by a State to the commission by another State of an act", wondered what acts Mr. Ago had in mind. When a State issued authorizations to fishermen from another State to fish in its territorial sea, could it be said that it was giving its consent to the commission of a certain act? Such agreements, like the one between the Soviet Union and Japan, sometimes stipulated that the validity of the fishing permits was limited to certain seasons or certain catches. It was extremely doubtful whether agreements of that kind involved consent to the commission of an act; in all cases, they were delegatory agreements. Any State, in exercising its sovereignty over its territorial sea, could conclude with another State an agreement by which it authorized certain nationals from that State to fish in its territorial waters. Once such an agreement had been concluded, one could not speak of an act that might be wrongful. The obligation not to fish no longer existed, but a right to fish did exist. Thus no consent had been given to the commission of an act that might be regarded as wrongful.

35. Mr. TABIBI said that Mr. Jagota's proposal was extremely valuable, since it helped to remove some of the doubts experienced by members of the Commission, more particularly in connexion with the concept of validly expressed consent. However, the provision that consent should be given before the commission of the act, although a very useful safeguard, might create certain problems, for in some cases it would prove very difficult to obtain prior consent. In the atomic age, the security of nations might require consent to be given only split seconds before the act was to be committed. Perhaps Mr. Jagota would like to reflect further on that point.

36. Mr. RIPHAGEN said that the Commission was dealing with three different kinds of situations. The first situation was that of an oral or even a written agreement between State A and State B which suspended or ended the obligation of State A towards State B. That case was covered by the law of treaties. The second situation was that relating to a type of conduct by so-called victim State B which might preclude the responsibility of the so-called wrongdoing State A. That case was covered by the principle *volenti non fit injuria*, and in some instances the conduct that amounted to consent might be purely unilateral. The third situation involved waiver by State B of its right of action towards State A—even an action that amounted to a reprisal. In those three situations, State B renounced some of its rights in respect of State A, but the question arose as to what rights could be renounced. Obviously State B could renounce only its own rights and never the rights of a third State. Admittedly, in situations involving breaches of peremptory rules of international law, certain rights could not be renounced even by treaty, let alone by mere consent. In other situations, however, a State could for example renounce a right to monetary compensation, and in general, although not always, a State could obviously renounce its right to the application of a sanction, within the restrictive meaning of the term "sanction" employed by Mr. Ago.

37. It was evident that the difficulties being experienced by the Commission lay in the different types of situations and the different consequences of wrongful acts that had to be dealt with in the context of article 29. In that regard, he wondered whether the proposal made by Mr. Verosta and incorporated in the proposal by Mr. Jagota really resolved the problem. Why should the consent of State B, given in violation of the right of State C *vis-à-vis* State B, not extinguish the responsibility of State A *vis-à-vis* State B? The consent of State B to the entry of armed forces into its territory might violate the rights of State C, but would it still engage the responsibility of State A, which dispatched armed forces to State B? In his opinion, the answer was certainly in the negative. Such consent would entail the responsibility of State A towards State C, and probably the responsibility of State B towards State C, under the rule concerning aid or assistance of a State to another State adopted in article 27 of the draft.[4] For the moment, however, he failed to see why the consent of State B to the entry into its territory of armed forces of State A should entail the responsibility of State A *vis-à-vis* State B. State A had the consent of

[4] See 1532nd meeting, foot-note 2.

State B, even though that consent violated the right of a third State.

38. Mr. JAGOTA, referring to Mr. Schwebel's suggestion, said that it might be preferable to speak of "well known" rather than "notorious" constitutional prohibitions. He would certainly incorporate the words "well known" in his proposed form of words for insertion in the commentary, but they might also be interpreted as qualifying "international prohibitions", where there were no grounds for making the distinction between "notorious" and other kinds of prohibitions. Nevertheless, that point could also be explained very easily in the commentary.

39. With regard to the question raised by Mr. Tabibi, the fundamental principle was that consent must be given before the commission of the act, and, in cases where time was of the essence, consent might have to be sought and obtained only a very few seconds beforehand, either by "hot line" telephone or some other rapid means of communication. In establishing the rule in article 29, it was essential to specify that consent obtained after the commission of the act constituted waiver, and that the wrongfulness of the act could be precluded solely by obtaining prior consent.

40. Lastly, the fears expressed by Mr. Riphagen might be overcome by the provision to the effect that valid and explicit consent could not violate the rights of a third State without the latter's agreement, so that the wrongfulness of an act would be extinguished by consent between the parties *inter se*. The question whether consent could ever be given at all when it affected the rights or obligations of a third State would be dealt with in the commentary in connexion with the validity of the consent.

41. The CHAIRMAN, speaking as a member of the Commission, said that chapter V, entitled "Circumstances precluding wrongfulness", was necessary to the draft. In his preliminary considerations (A/CN.4/318 and Add.1–3, paras. 48–55), Mr. Ago had demonstrated that need, but the discussion on the first article of chapter V, namely, article 29, gave reason to fear a Pandora's box. In tackling the question of circumstances precluding wrongfulness, the Commission was running the risk of having to take a position on certain aspects of general international law for the first time, since it had not as yet had occasion specifically to consider those special circumstances. In several of its reports on previous sessions, the Commission had already made reference to the various special circumstances that it had intended to study. It was now confronted with preliminary issues that might make the elaboration of the articles in chapter V much more complicated.

42. To overcome those difficulties, it might perhaps be advisable to draft an article that could be placed at the beginning of chapter V and would explain the context in which the circumstances precluding wrongfulness were to be considered. Since the Commission was encountering serious difficulties and must complete its study of State responsibility for internationally wrongful acts as soon as possible, such an article would doubtless prove useful.

43. Mr. VEROSTA, referring to the amendment he had proposed earlier (para. 20 above), which had been taken up in a modified form in Mr. Jagota's proposal (para. 28 above), emphasized that the application of the exception of *jus cogens* was not confined to rules laid down in multilateral treaties. For example, in the matter of neutrality there was nothing to prevent Sweden from allowing German troops to cross its territory. The situation would be different in time of war, since Sweden's right to dispose freely of its territory would be limited by the rights of the belligerents, and Sweden would have to act in accordance with the rules of neutrality. During the Second World War, when Sweden had allowed German troops proceeding from Norway to Denmark to cross its territory, it had doubtless obtained the acquiescence of the Allies.

Organization of work (*continued*) *

44. Mr. SUCHARITKUL said that, as a result of his delayed arrival at Geneva, he had been unable to submit information on the progress of the preliminary report that he was to present in his capacity as Special Rapporteur on the topic of jurisdictional immunities of States and their property. He hoped that the suggestions by the Enlarged Bureau for the consideration of topics on the agenda (1539th meeting, para. 1) did not rule out the possibility that he might submit his preliminary report within three or four weeks' time and that the topic might be discussed at one or two meetings towards the end of the session.

45. The CHAIRMAN said that the topic of jurisdictional immunities of States and their property was included as item 10 of the agenda, and would certainly be discussed when the report became available. The suggestions by the Enlarged Bureau for the consideration of topics gave only approximate dates and simply represented the over-all framework for the Commission's discussions.

The meeting rose at 1 p.m.

* Resumed from the 1539th meeting

1543rd MEETING

Thursday, 31 May 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam,