

Document:-  
**A/CN.4/SR.1641**

**Summary record of the 1641st meeting**

Topic:  
**Other topics**

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Paragraph (36)

33. Sir Francis VALLAT proposed that the words “the Legal Adviser or” in the first sentence, should be deleted.

*It was so decided.*

*Paragraph (36), as amended, was approved.*

Paragraph (37)

34. Mr. SCHWEBEL, referring to the first sentence, said that while the judiciary should be independent of the executive in matters of adjudication, in some countries that was not the case. Moreover, the doctrine of the separation of powers was not a universal doctrine. He proposed, therefore, that the word “normally” should be replaced by the word “generally” and that the words “due to the doctrine of separation of powers” should be deleted.

*It was so decided.*

35. Mr. REUTER said that he wished to express a formal reservation regarding the developments reflected in paragraph (37) which were based exclusively on English and United States common law and took no account of European judicial decisions, so that they could not form a basis for international law.

*Paragraph (37), as amended, was approved.*

Paragraph (38)

36. Mr. REUTER expressed the reservation that the developments reflected in paragraph (38) related to the field of comparative constitutional law and had nothing to do with public international law.

37. Sir Francis VALLAT endorsed the view.

38. Mr. SCHWEBEL proposed that, in order to facilitate the work of the Commission, members should be given more time to study the commentary as a whole, before considering it further.

*It was so decided.*

*The meeting rose at 12.55 p.m.*

## 1641st MEETING

*Thursday, 24 July 1980, at 3.20 p.m.*

*Chairman: Mr. C. W. PINTO*

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

## Draft report of the Commission on the work of its thirty-second session (*continued*)

### CHAPTER VI. *Jurisdictional immunities of States and their property* (*concluded*) (A/CN.4/L.322)

#### B. *Draft articles on jurisdictional immunities of States and their property* (*concluded*)

##### PART II (General principles) (*concluded*)

##### *Commentary to article 6* (State immunity) (*concluded*)

1. Mr. THIAM observed that there had been many reservations on the Special Rapporteur's second report on jurisdictional immunities of States and their property (A/CN.4/331 and Add.1); he thought it would be wiser to defer consideration of the topic until the following year.

2. The CHAIRMAN said that Mr. Thiam's comment would be recorded in the summary records of the session.

3. Sir Francis VALLAT said it would be less than justice not to send forward to the General Assembly the paragraphs which had already been considered in connexion with articles 1 and 6, indicating very clearly the provisional nature of article 6. Paragraphs (36) and (37) of the commentary were repetitive and tended to give the impression of extending the practice in the matter, which was largely United States of America practice, and presenting it as if it applied on a much wider basis than it actually did. Those difficulties might be removed by adding the following sentence to paragraph (6) of the commentary: “Accordingly, it is considered useful to set out the following information, which is based upon the second report submitted by the Special Rapporteur”.

4. Paragraphs (36) and (37), in turn, needed to be cut down in order to narrow their scope to some extent, which could best be done by merging them into a single paragraph. He proposed, therefore, that the first sentence of paragraph (36) should be revised to read as follows: “Apart from the determination of the question of fact or of status, the executive may also have the right to intervene *amicus curiae*, through a responsible governmental agency such as the Attorney General, for example, by making a suggestion to the effect that in a given case immunity should be accorded or denied”.

5. The next sentence should be deleted. Paragraph (36) should then continue with the first sentence of the former paragraph (37), amended to read as follows: “Since the judiciary, in principle as well as in practice, is generally independent of the executive in matters of adjudication, it appears that the courts are not always bound to follow the lead of the executive in every case”. Foot-note 77 should be placed after the words “to follow suit” in the next sentence, and foot-note 78 after the word “instance” at the end of that sentence. In the following sentence, the words “the courts could still grant jurisdictional immunity” should be amended to “the courts may still grant jurisdictional immunity”.

6. Mr. THIAM said that he maintained his reservation, but was not opposed to Sir Francis Vallat's proposal, which was an improvement in that it meant submitting the Special Rapporteur's second report for information purposes without approving it.

7. The CHAIRMAN said that all members thought there were certain drawbacks in the report, but that was largely due to the fact that Mr. Sucharitkul had been unable to present it in person. He suggested that the Commission should accept the amendment to paragraph (6) proposed by Sir Francis Vallat, as well as his proposals in regard to paragraphs (36) and (37), which would then be merged into a single paragraph.

*It was so decided.*

*Paragraphs (36) and (37), as combined and amended, were approved.*

Paragraph (49)

8. Sir Francis VALLAT questioned the citation in foot-note 104, as well as the earlier foot-note 75 (in reference to para. (35)).

9. The CHAIRMAN said that those foot-notes would be checked by the Secretariat.

*Paragraph (49) was approved.*

*The commentary to article 6, as amended, was approved.*

*Section B, as amended, was approved.*

*Chapter VI, as amended, was approved.*

#### **CHAPTER IX. Other decisions and conclusions (A/CN.4/L.325)**

10. The CHAIRMAN explained that the dots after the letter "A" in the table of contents were to indicate space left for the report of the Planning Group on the programme and methods of work of the Commission, which was not yet quite ready.

#### **B. Relations with the International Court of Justice**

11. The CHAIRMAN pointed out that Mr. Sette Câmara had attended some of the Commission's meetings, but he was not sure that he had been present as an observer for the Court.

*Section B was approved.*

#### **C. Co-operation with other bodies**

12. Sir Francis VALLAT proposed that mention should also be made of the Arab Commission for International Law, which had sent an observer to recent Commission meetings.

13. The CHAIRMAN said that an appropriate reference would be added in Chapter IX of the report.

*Section C, subject to that addition, was approved.*

#### **D. Date and place of the thirty-third session**

14. The CHAIRMAN observed that it had been decided the preceding day to hold the thirty-third session from 4 May to 24 July 1981.

*Section D was approved.*

#### **E. Representation at the thirty-fifth session of the General Assembly**

*Section E was approved.*

#### **F. International Law Seminar**

15. Mr. RATON (Secretariat) informed the Commission that the Swedish Government had just announced that it had made an additional payment, bringing the total amount of its contribution to the Seminar up to US \$8,000. He therefore proposed that the third sentence of paragraph 23 should be replaced by the following sentence: "Particular thanks are due to the Governments of the Netherlands and Sweden, which, following the example set by the Norwegian Government in 1979, tripled their contributions in 1980."

16. The CHAIRMAN said that a reference to Sweden would be included in paragraph 23.

*Section F, as amended, was approved.*

#### **CHAPTER I. Organization of the session (A/CN.4/L.319)**

17. Sir Francis VALLAT pointed out that the reference to "two of those articles", in the eighth line of paragraph 2, should be amended to read "three of those articles".

*It was so decided.*

18. The CHAIRMAN said that the blank spaces in paragraph 9 would, of course, be filled in by the Secretariat.

*Chapter I, as amended, was approved.*

#### **CHAPTER VIII. Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (A/CN.4/L.324)**

Paragraph 4

19. Mr. ŠAHOVIĆ thought it was unnecessary to say that the topic was "modest".

20. Mr. YANKOV (Special Rapporteur) said he had not used the adjective "modest" as a general qualification, but only with respect to the topic's doctrinal implications. However, he would not object to its deletion.

21. The CHAIRMAN suggested that the beginning of the first sentence of paragraph 4 should be shortened to read: "It was pointed out by the Special Rapporteur that the topic was significant, in view of ...".

*It was so decided.*

*Paragraph 4, as amended, was approved.*

Paragraph 7

22. Mr. SCHWEBEL, referring to chapter VIII as a whole, said he saw no reflection of the view that

codification of the topic was unnecessary because the existing codification was sufficient. Paragraph 7, in particular, did not quite give the flavour of the relevant General Assembly resolution.

23. Mr. YANKOV (Special Rapporteur) said that General Assembly resolution 31/76 had referred to "the desirability of elaborating provisions concerning the status of the diplomatic courier". Paragraph 7 referred to that resolution, as well as to General Assembly resolution 33/140, which mentioned the "elaboration of an appropriate legal instrument". He thought, therefore, that paragraph 7 should be kept as it stood, while Mr. Schwebel's point could be covered later.

*Paragraph 7 was approved.*

#### Paragraph 20

24. Mr. SCHWEBEL proposed that the following sentence should be added to paragraph 20: "However, it was also maintained that there is no need for a new instrument, on the ground that the essential rules are sufficiently codified in existing treaties".

*It was so decided.*

*Paragraph 20, as amended, was approved.*

#### Paragraph 21

25. Sir Francis VALLAT said he shared Mr. Schwebel's doubts about the need for codification. In his opinion, it was very dangerous to go into excessive detail. He proposed that the last clause in paragraph 21, which read: "and even contraproductive and therefore he urged that priority be given to the elaboration of general rules", should be deleted.

*It was so decided.*

*Paragraph 21, as amended, was approved.*

#### Paragraph 22

26. Mr. SCHWEBEL proposed the inclusion, at the beginning of the paragraph, of some such sentence as "It was recalled that General Assembly resolution 34/141 of 17 December 1979 referred to 'the possible elaboration of an appropriate legal instrument'". In the third sentence, the words "the question relating to the form of the eventual legal instrument . . ." should be amended to read: "the question relating to the form of any eventual legal instrument . . .". In the last line, the words "the prospects for ratification of the eventual instrument." should be amended to read: "the prospects for ratification of any such instrument."

*It was so decided.*

*Paragraph 22, as amended, was approved.*

#### Paragraph 26

27. Mr. RIPHAGEN proposed that the words "It was also noted that the items", in the penultimate

sentence, should be amended to read: "It was also noted that some items . . .".

*It was so decided.*

28. Mr. ŠAHOVIĆ suggested that, in the French text, the words "*Un membre de la Commission*", at the beginning of the last sentence, should be replaced by the word "*On*", to indicate that it was not one isolated opinion.

29. The CHAIRMAN suggested the use of some equally neutral expression, such as "The view was expressed", in the English text.

30. Mr. YANKOV (Special Rapporteur) said it was true that one member would prefer to put all issues relating to the bag before the issues relating to the courier. According to the concept of a functional approach, privileges and immunities were not extended to the person, but to the function.

31. Sir Francis VALLAT proposed the deletion of the word "prominent" in the expression "a more prominent functional approach".

32. The CHAIRMAN suggested that the last sentence should be amended to read: "The view was expressed that a more functional approach would justify placing the draft articles on the status of the bag before the draft articles on the status of the courier".

*It was so decided.*

*Paragraph 26, as amended, was approved.*

#### Paragraph 29

33. Sir Francis VALLAT proposed that paragraph 29 should be placed immediately after paragraph 26, as it would be convenient to have the two ideas dealt with side by side.

*It was so decided.*

#### Paragraph 30

34. Sir Francis VALLAT suggested that the word "any" should be substituted for the word "the" before the phrase "eventual legal instrument", in order to conform with paragraph 22 as amended.

*Paragraph 30, as amended, was approved.*

*Chapter VIII, as amended, was approved.*

#### CHAPTER VII. *International liability for injurious consequences arising out of acts not prohibited by international law* (A/CN.4/L.323)

35. Mr. QUENTIN-BAXTER (Special Rapporteur) pointed out that the paragraph numbers indicated on the title page for section 13 should be 9–22.

#### A. Introduction

*Section A was approved.*

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

## Paragraph 9

36. Mr. QUENTIN-BAXTER (Special Rapporteur) drew attention to a typographical error in the last line, where the words "of management" should read "or management".

*Paragraph 9, as corrected, was approved.*

## Paragraph 12

37. Mr. THIAM suggested that, in the last sentence, the word "jurisdiction" should be replaced by the word "control".

38. Mr. QUENTIN-BAXTER (Special Rapporteur) said that he understood the reason for Mr. Thiam's concern. In English, however, the word "control" would seem rather to obscure the real point, which was the the laws of the State which might suffer the loss really had no means of making themselves effective in relation to the danger. He was, however, aware that "danger" was not normally a word which attracted the word "jurisdiction".

39. Mr. YANKOV suggested that both ideas might be included and a reference made to "jurisdiction or control", as in paragraph 14.

40. Mr. RIPHAGEN suggested that the matter might be clarified by referring to the "cause of danger" rather than the "danger".

41. Sir Francis VALLAT said that in his opinion, it would be preferable to indicate that it was a question of an act of a State and not merely of any danger. He therefore suggested that the last sentence of paragraph 12 should read: "The topic is of practical importance precisely because the act of the State giving rise to the danger is not within the jurisdiction of the State which may suffer the harm".

*It was so decided.*

*Paragraph 12, as amended, was approved.*

## Paragraph 14

42. Mr. THIAM said there was some contradiction between the words "they are not exposed to charges of unlawful conduct", in the penultimate sentence of paragraph 14, and paragraph 11 which accepted that the liability being considered did not arise from wrongfulness.

43. Mr. QUENTIN-BAXTER (Special Rapporteur) said he did not believe that there was any conflict in meanings in that part of paragraph 14. What was suggested was that any question of unlawful conduct could be avoided by the taking of measures in agreement with other States.

*Paragraph 14 was approved.*

## Paragraph 17

44. Mr. YANKOV said it seemed to him that the notion of "physical environment" used in paragraph

17, and also in paragraph 9, needed some clarification, as it might seem to depart from the more comprehensive notion of environment, which was not always confined to the physical. He would prefer the term "environment" unqualified, at least at that stage. He was not, however, pressing for the text to be amended.

45. Mr. QUENTIN-BAXTER (Special Rapporteur) said that he understood Mr. Yankov's concern and that his was not the only expression of doubt about the correct limitation of the expression. It was intended to convey that most actions with which recent international activity had been concerned had involved the physical use of the environment—not merely what might be called the policy of a particular country, but the actual use of its territory for some purpose. It was not implied either in his report or in the draft report of the Commission that the consequences of such action were in any way limited to the physical environment. He believed there was an element of appreciation still to be made, but had understood the sense of the Commission to be that the subject should not be narrowed at the current session.

46. Sir Francis VALLAT said it seemed quite clear to him that the Commission's intention was to read the word "environment" in as wide a sense as possible, having regard, at that stage, to the physical environment, though not necessarily excluding other aspects at a later stage.

*Paragraph 17 was approved.*

## Paragraph 20

47. The CHAIRMAN informed the Commission that the Special Rapporteur wished to propose a new sentence to become the penultimate sentence of paragraph 20. That sentence read: "Several speakers noted that this entailed a trend towards stricter standards of liability, and it was recognized that the question of attribution would need further study".

*It was so decided.*

*Paragraph 20, as amended, was approved.*

*Chapter VII, as amended, was approved.*

**CHAPTER IX. Other decisions and conclusions (concluded)**

48. The CHAIRMAN proposed that the Commission consider the text of section A (A/CN.4/L.325/Add.1), concerning the report on the Planning Group on the programme and methods of work of the Commission, which had just been distributed.

**A. Programme and methods of work of the Commission (A/CN.4/L.325/Add.1)**

## Paragraph 18

49. Mr. USHAKOV said it was unnecessary to draw the attention of the General Assembly yet again to the question of the honoraria of members of the Commission; by doing so, the Commission might lay itself

open to criticism. He therefore proposed that paragraph 18 be deleted.

*Paragraph 18 was approved.*

Paragraph 19

50. Sir Francis VALLAT suggested that, in order to avoid the rather frequent repetition of the words “wishes to bring to the attention of the General Assembly”, the first sentence of the paragraph might read: “The Commission also noted that it is sometimes necessary for Special Rapporteurs to provide their own research and other assistance out of their own resources”.

*It was so decided.*

*Paragraph 19, as amended, was approved.*

*Section A, as amended, was approved.*

**A bis. Publication of the third edition of the handbook *The Work of the International Law Commission***

51. Sir Francis VALLAT suggested that the wording of the last line, which referred to “scientific institutions and the public at large” might be put into conformity with a similar reference suggested by Mr. Verosta, bringing in all scientific and university entities.

*It was so decided.*

*Subject to that amendment, section A bis was approved.*

**A ter. Tribute to the Deputy Secretary of the Commission**

*Section A ter was approved.*

**C. Co-operation with other bodies**

**4. ARAB COMMISSION FOR INTERNATIONAL LAW**

*Section C.4 was approved.*

*Chapter IX as a whole, as amended, was approved.*

**CHAPTER V. The law of the non-navigational uses of international watercourses (A/CN.4/L.321 and Add.1)**

**A. Introduction**

Paragraph 39

52. Sir Francis VALLAT said he thought the last sentence might be made to express the thought more fully. He suggested that it might read: “It is also useful to prepare a provisional draft of draft article X . . .”.

53. Mr. SCHWEBEL (Special Rapporteur) agreed that the sentence might be rephrased.

54. Mr. USHAKOV said he must emphasize that all draft articles were adopted provisionally on first reading.

55. The CHAIRMAN said that, in the absence of any objection, he took it that the last sentence of paragraph 39 would be rephrased by the Special Rapporteur, bearing in mind Mr. Ushakov's comment.

*It was so decided.*

*On that understanding, paragraph 39 was approved.*

*Section A, as amended, was approved.*

**B. Draft articles on the law of the non-navigational uses of international watercourses.**

*Commentary to Article 1 (Scope of the present articles)*

Paragraph (1)

56. Mr. ŠAHOVIĆ suggested that a foot-note be added to indicate the passage in the Special Rapporteur's report where the meaning to be given to the word “uses” was discussed.

57. Mr. SCHWEBEL (Special Rapporteur) said he believed it would be possible to make a reference to “uses” in paragraph (1), which would cover Mr. Šahović's point.

*It was so decided.*

*Subject to that addition, paragraph (1) was approved.*

*The commentary to article 1, as amended, was approved.*

*Commentary to article 2 (System States)*

*The commentary to article 2 was approved.*

*Commentary to article 3 (System agreements)*

58. Mr. USHAKOV said that from paragraph (4) onwards the commentary did not correspond to article 3, because it dealt with system agreements in general, whereas article 3 related only to agreements that applied and adjusted the provisions of the draft articles. Such agreements did not yet exist, because there were not yet any articles to apply or adjust. Hence it was incorrect to say that there was a customary rule obliging States to negotiate with a view to concluding such agreements, since the articles calling for those agreements had not yet been drafted. It was equally incorrect to say that the rules to be stated in those agreements must be residuary rules, since that would mean that the States parties to system agreements could not only adapt the articles, but also derogate from them.

*The commentary to article 3 was approved.*

*Commentary to article 4 (Parties to the negotiation and conclusion of system agreements)*

*The commentary to article 4 was approved.*

*Commentary to article 5 (Use of waters which constitute a shared natural resource)*

Paragraphs (3)–(5)

59. Mr. ŠAHOVIĆ proposed that paragraph (4) should be deleted, as he did not see the need to discuss the validity of an instrument as important as the Charter of Economic Rights and Duties of States. In

his opinion it was too serious a matter to be dealt with in haste.

60. Mr. SCHWEBEL (Special Rapporteur) said he would prefer paragraph (4) to be retained. It was correct in law, since it could not be maintained that a General Assembly resolution, or portions of it, against which a substantial number of members had voted was declaratory of international law. The important reason for including the paragraph was that certain influential States—Brazil, for example—had felt strongly about the issue and voted against. If the matter was passed over lightly in the commentary and the impression given that it was on the same legal plane as, for example, a treaty or arbitral award, there might be a severe reaction. It would be prudent to recognize that the article had been a source of controversy.

61. Mr. DÍAZ GONZÁLEZ said he agreed with Mr. Šahović. In his opinion, paragraph (4) did not say anything significant about article 5. It was true that General Assembly resolutions did not in themselves create obligations. He believed, however, that the significance of the paragraph might be taken as being the contrary of what Mr. Schwebel had said, since there had been 120 votes in favour of the resolution and only six against, while the article itself had received 100 votes in favour and only eight against. He considered that the opinion quoted at the end of the paragraph was not useful as an indication of importance of the subject and that it would be more prudent, and more in keeping with the agreement reached within the Commission, to delete paragraph (4).

62. Mr. FRANCIS said that the Commission should not attempt, at that stage, to evaluate the legal significance of article 3 of the Charter of Economic Rights and Duties of States, but should make use of the element contained in it, which was very relevant to the topic. He wished to make a reservation on the approach adopted in paragraphs (3) and (4).

63. Mr. RIPHAGEN said he thought it important to make a distinction between article 3 of the Charter of Economic Rights and Duties of States, which was relevant in the present context, and other articles of the same Charter which were not relevant. He suggested that paragraphs (4) and (5) should be combined and should be amended to start: "This article was a source of controversy. Nevertheless the article is of high interest. In the first place . . ."

64. Mr. ŠAHOVIĆ said that he found that suggestion acceptable.

65. The CHAIRMAN suggested that a foot-note might be inserted after the word "controversy", to show the voting in the General Assembly.

66. Sir Francis VALLAT suggested that the reference to voting be deleted from paragraphs (3) and (4) and that paragraphs (4) and (5) be combined, starting as suggested by Mr. Riphagen.

67. Mr. SCHWEBEL (Special Rapporteur) said he did not agree with Sir Francis Vallat that the vote was not of interest. Since the Commission was dealing with legal issues and presumably referred to General Assembly resolutions because they might be of legal relevance, it could make a considerable difference whether a resolution had been adopted unanimously or whether there had been opposing votes. In the case in question, he believed that the fact that the resolution had not been adopted unanimously was of considerable importance.

68. The CHAIRMAN suggested that paragraphs (4) and (5) should be combined, starting as proposed by Mr. Riphagen, and that a foot-note should be inserted after the word "controversy" to show the voting in the General Assembly.

*It was so decided.*

*Paragraphs (3)–(5), as amended, were approved.*

Paragraph (7)

69. Mr. YANKOV asked whether the reference to voting could not be treated in the same way in paragraph (7). It seemed to him unusual to refer to votes.

70. Mr. VEROSTA said there was some merit in including the votes, because the Commission was trying to identify possible trends in international relations and to find out how large numbers of States were thinking on certain subjects.

71. Mr. RIPHAGEN observed that the voting mentioned in paragraph (7) was 128-0-9; as there had been no votes against, it did not seem important to include those figures.

72. The CHAIRMAN suggested that the penultimate sentence of paragraph (7) should be amended to read: "The General Assembly adopted without dissent the report of the United Nations Water Conference . . .".

*It was so decided.*

*Paragraph (7), as amended, was approved.*

Paragraph (10)

73. Mr. SCHWEBEL (Special Rapporteur) suggested that the first sentence of paragraph (10) should be amended to read: "The striking support resolution 3129 (XXVIII) gives to themes of these articles is clear."

*It was so decided.*

*Paragraph (10), as amended, was approved.*

Paragraph (18)

74. Mr. SCHWEBEL (Special Rapporteur) suggested that the word "now" should be deleted from the third sentence, so that it would read: "The operative paragraphs as proposed by Pakistan read: . . .". He also pointed out that the word "so" should be added in

the last sentence so that it would read: "... amending paragraph 2 of the resolution so as to substitute ...".

*Paragraph (18), as amended, was approved.*

#### *Sub-headings*

75. Mr. SCHWEBEL (Special Rapporteur) said that in drafting the commentaries he had not inserted any sub-headings, as he had been under the impression that they were not used in such reports. It would be useful, for example, to insert a sub-heading such as "Navigational uses", before paragraph (33). He suggested that the Secretariat should be requested to insert sub-headings throughout the commentary, as appropriate.

76. The CHAIRMAN agreed that the Secretariat might insert sub-headings, preferably employing phrases from the text as it stood and provided the expressions used were chosen with due caution.

*It was so decided.*

#### *Paragraph (77)*

77. Mr. SCHWEBEL (Special Rapporteur) suggested that the last part of the last sentence be amended to read: "... their use in one system State affects a use in another system State—is carried through in this article as well".

*Paragraph (77), as amended, was approved.*

#### *Paragraph (79)*

78. Mr. ŠAHOVIĆ said he regretted that the principle of the permanent sovereignty of States over their natural resources had not been mentioned in the draft report in connexion with article 5, because he thought one could not speak of shared natural resources without taking that principle into account.

79. The CHAIRMAN said that, in view of Mr. Šahović's comment, the Commission might wish to consider the insertion of an additional sentence to indicate that the view had been expressed that the absence of any mention of that principle was an omission.

80. Mr. SCHWEBEL (Special Rapporteur) said that the Commission should bear in mind that the point raised was a very controversial one. He himself considered that it was not relevant in the present context. He recognized that there had been a difference of opinion on the matter, but did not think it vital to the operative conclusions. There was a fleeting mention of permanent sovereignty over natural resources in the quotation from General Assembly resolution 34/186 in paragraph (19) of the commentary to article 5, which would seem to confirm the principle. It was not through an oversight, however, that there was no further mention of that principle, but because he had thought it might lead to a discussion which would not be productive at that stage.

81. He did not see the merit of discussing permanent sovereignty in general in the present context. It was a controversial principle and might prejudice the possibility of reaching agreement on the topic under consideration. It was true, however, that the principle had been referred to in the Commission's discussions, and if it was considered necessary, he would be agreeable to mentioning it; but he would wish any reference to be balanced. It might perhaps be stated that some members believed that the principle of permanent sovereignty over natural resources had a bearing on the evolution of articles in the field under consideration and that another member did not.

82. The CHAIRMAN suggested that an additional paragraph (80) should be inserted along these lines.

*It was so decided.*

*Paragraph (79) was approved.*

83. Sir Francis VALLAT said that, as some concern had already been expressed about the length of the commentary, he wondered whether it would be possible to insert, as a new paragraph (2), a short summary to serve as an index to what followed. Such a summary would facilitate the reading of the report.

84. Mr. SCHWEBEL (Special Rapporteur) said that he appreciated Sir Francis's point and that he himself was rather concerned about the question of the length of commentaries, particularly the commentary to article 5. He wondered whether in future it might be desirable to adopt a policy of taking only a few examples to illustrate comments and referring, for other examples, to the relevant report of the Special Rapporteur.

*The commentary to article 5, as amended, was approved.*

*Commentary to article X (Relationship between the present articles and other treaties in force)*

*The commentary to article X was approved.*

*Chapter V, as amended, was approved.*

*The meeting rose at 6.05 p.m.*

## 1642nd MEETING

*Friday, 25 July 1980, at 10 a.m.*

*Chairman: Mr. C. W. PINTO*

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

*Also present: Mr. Ago.*