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Summary record of the 1559th meeting

Topic:
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Conference on the Law of Treaties. It should also ask the Secretariat to extract from United Nations records the statements made on that subject in the General Assembly.

35. He pointed out that the Conference on the Law of Treaties could have referred, in article 52 of the Vienna Convention, only to the Charter of the United Nations. The reason why it had referred to the principles of international law embodied in the Charter was that it had intended the article to apply also to treaties concluded prior to the Charter. For it had considered that, during the period immediately preceding the adoption of the Charter, States had concluded a number of treaties that should be regarded as void. The commission had been asked how long those principles had been in existence, since if they had always existed most territorial treaties could be challenged, which would endanger the international territorial order. The Commission had said that it was not qualified to answer that question, but that the principles had certainly been in force in or about 1928, when the League of Nations had adopted its main instruments.

36. In connexion with the definition of aggression, the General Assembly had already raised the question whether an international organization could resort to the unlawful use of armed force. Article 1 of the Definition of Aggression[6] specified that the term "State" "includes the concept of a 'group of States' where appropriate". In his view, what was at issue was not so much whether a distinction ought to be made between treaties concluded between States and international organizations and treaties concluded between international organizations only, as whether an international organization could use force unlawfully.

37. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 52 to the Drafting Committee.

It was so decided.[7]

The meeting rose at 1 p.m.

[6] General Assembly resolution 3314 (XXIX), annex.

[7] For consideration of the text proposed by the Drafting Committee, see 1576th meeting.

1559th MEETING

Monday, 25 June 1979, at 3.10 p.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Welcome to Mr. Barboza

1. The CHAIRMAN congratulated Mr. Barboza on his election and welcomed him to the Commission.

2. Mr. BARBOZA thanked the Commission for the welcome extended to him and for the honour of being elected to its membership—an honour that entailed an obligation to contribute to the best of his ability towards maintaining the Commission's traditionally high standards of work.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/319)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*concluded*)

ARTICLE 53 (Treaties conflicting with a peremptory norm of general international law (*jus cogens*))

3. The CHAIRMAN invited the Special Rapporteur to introduce draft article 53 (A/CN.4/319), which read:

***Article 53. Treaties conflicting with a peremptory norm of general international law* (jus cogens)**

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present articles, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

4. Mr. REUTER (Special Rapporteur) pointed out that draft article 53 was identical with the corresponding article of the Vienna Convention,[1] which stipulated that States could not derogate from peremptory norms of general international law. As international organizations were established by treaties concluded by States, it was unthinkable that they should be exempted from compliance with those norms. It was therefore appropriate to include in the draft an article equivalent to article 53 of the Vienna Convention.

5. It was open to question whether the phrase "the international community of States" was altogether appropriate in the article under consideration and whether the words "and international organizations" should not be added. In his opinion, the addition of those words would only cause difficulties. The international community of States was a unitary notion, which did not call for any mention of international organizations.

6. Mr. TSURUOKA approved of the draft article under consideration.

[1] See 1546th meeting, foot-note 1.

7. Mr. USHAKOV was not sure whether peremptory norms of general international law, which were undoubtedly binding on States, were also binding on international organizations. That question could be dealt with in the commentary.

8. Mr. FRANCIS said he could accept article 53 in the form proposed by the Special Rapporteur. He believed, however, that it would be preferable to delete the words "of States" from the phrase "international community of States as a whole", since the article imposed obligations not only on States but also on international organizations as subjects of international law.

9. Mr. DÍAZ GONZÁLEZ said that the discussions at the United Nations Conference on the Law of Treaties had clearly shown the need and the justification for the text of article 53 of the Vienna Convention. There was certainly no reason why international organizations should be exempted from the application and observance of rules of *jus cogens*. He therefore fully endorsed the terms of the draft article and the Special Rapporteur's view that "the international community of States as a whole" should be regarded as a unitary concept.

10. Sir Francis VALLAT said that draft article 53 was extremely important and that its terms must apply not only to States but also to international organizations. Like Mr. Francis, however, he had some hesitation about including the words "of States".

11. Article 53 of the Vienna Convention had been studied with exceptional thoroughness and the phrase "a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole" had been adopted only after long discussion. The Conference had taken the view that, since it was not possible to seek the acceptance and recognition of each and every State in the world, it was essential that a peremptory norm of general international law should have been accepted by the international community as a whole. The reasoning behind that approach had been that peremptory norms were of an exceptional character in the context of traditional international law and should not be accepted lightly. The same reasoning applied in the case of international organizations, and he would have been inclined to press that point of view were it not for the fact that article 2, paragraph 1 (*i*),[2] defined an international organization as an intergovernmental organization, in other words, an inter-State organization. Consequently acceptance and recognition by the international community of States of the fact that a norm was peremptory in character indirectly signified the same acceptance and recognition on the part of international organizations.

12. On the other hand, deletion of the words "of States" would give rise to a number of difficulties, since the article would then depart from the corresponding text of the Vienna Convention, and would have the effect of placing States and international organizations on the same footing as members of the international community. It was one thing to say that international organizations had international legal personality and the capacity to include treaties, but quite another to place international organizations in the same position as States in regard to peremptory norms of general international law. Despite some hesitation, therefore, he was inclined to favour the text submitted by the Special Rapporteur.

13. Mr. REUTER (Special Rapporteur) pointed out that, if the Commission decided in favour of the phrase "the international community as a whole", it would have to justify the deletion of the words "of States". However, such deletion could assume a doctrinal significance that might not be accepted by all Governments. There were of course several categories of subjects of international law, as was shown by the advisory opinion of the International Court of Justice in the case concerning *Reparation for injuries suffered in the service of the United Nations,*[3] but it was a fact that there were original members of the international community—States—and derivative members. States could create legal entities—international organizations—which formed part of the international community and through which they could act. If the Commission affirmed that international organizations could establish precedents binding States, it would be entering the sphere of international custom, which would certainly cause a stir. Some might claim that individuals were also subjects of the international community as a whole. To avoid alarming Governments without cause, it would probably be preferable to retain the wording of the article as it stood.

14. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 53 to the Drafting Committee.

It was so decided.[4]

ARTICLE 54 (Termination of or withdrawal from a treaty under its provisions or by consent of the parties) *and*

ARTICLE 57 (Suspension of the operation of a treaty under its provisions or by consent of the parties)

15. The CHAIRMAN invited the Special Rapporteur to introduce draft articles 54 and 57 (A/CN.4/319) together, as they were very similar. The articles read:

Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:

(*a*) in conformity with the provisions of the treaty; or

[2] *Ibid.*, foot-note 4.

[3] *I.C.J. Reports 1949*, p. 174.

[4] For consideration of the text proposed by the Drafting Committee, see 1576th meeting.

(*b*) at any time by consent of all the parties after consultation with the States or international organizations which have only the status of contracting States or contracting international organizations.

Article 57. Suspension of the operation of a treaty under its provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(*a*) in conformity with the provisions of the treaty; or

(*b*) at any time by consent of all the parties after consultation with the States or international organizations which have only the status of contracting States or contracting international organizations.

16. Mr. REUTER (Special Rapporteur) pointed out that a distinction had been made in the Vienna Convention between "contracting States" and "parties". Before the entry into force of a multilateral treaty, States normally began by individually expressing their consent to be bound by the treaty. They thus acquired the status of contracting States. When the conditions for entry into force of the treaty had been met, the contracting States acquired the status of parties. Sometimes, however, a contracting State might not become a party at that time because, when expressing its consent to be bound by the treaty, it had made the effective origination of its obligations under the treaty conditional on the completion of certain formalities. That would be the case if a State wished first to bring its internal law into line with the treaty in question. The somewhat surprising wording of subparagraph (*b*) of articles 54 and 57 of the Vienna Convention was explained by the desire to cover that case.

17. Draft articles 54 and 57 had been modelled on the corresponding articles of the Vienna Convention, since an international organization could find itself in the same situation as a State which, at the time of expresssing its consent to be bound by a treaty, postponed the entry into force of the treaty for itself pending completion of certain procedures. An international organization might, for example, wish to go back on one of its decisions before a certain treaty entered into force for it.

18. In conclusion, he explained that the reason why he had refrained, in the two articles under consideration, from distinguishing between treaties concluded between States and international organizations and treaties concluded between international organizations was that, as the Commission had already had occasion to point out, the expression "States or international organizations" did not necessarily imply the presence of States and was therefore applicable to both categories of treaty.

19. Sir Francis VALLAT observed that the word "only", which did not appear in the corresponding articles of the Vienna Convention, had been inserted in subparagraph (*b*) of draft articles 54 and 57; the Drafting Committee would doubtless wish to consider that point.

20. Mr. FRANCIS, referring to subparagraph (*b*), said that the equivalent provisions of the Vienna Convention were intended to apply to all States that had not completed certain procedures, whereas the terms of draft articles 54 and 57 would apply both to States and to international organizations. He wondered whether, in the phrase "after consultation with the States or international organizations", the word "or" should not be replaced by the word "and", for it was possible to take the present wording as meaning either States or international organizations.

21. Mr. REUTER (Special Rapporteur) pointed out that, if the word "or" were replaced by the word "and", a distinction would have to be made between the two broad categories of treaties in subparagraph (*b*) of each of the two articles, and the latter part of that provision would have to be drafted on the following lines: "after consultation, as the case may be, with the international organizations which have only the status of contracting international organizations, or with the States and international organizations which have only the status of contracting States or contracting international organizations". If the Commission could accept the sense he intended to give to the word "or", it would not have to make that distinction and the text would be rather less cumbersome.

22. Mr. USHAKOV observed that a "State party" was still a "contracting State" and that the formula "after consultation with the other contracting States" had been rightly used in the Vienna Convention. In the draft articles under consideration, the following formula could be used: "after consultation with the other contracting international organizations or with the other contracting States and the other contracting international organizations, as the case may be".

23. Mr. TSURUOKA said that the articles under consideration raised only questions of drafting, and suggested that they be referred to the Drafting Committee.

24. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft articles 54 and 57 to the Drafting Committee.

It was so decided. [5]

ARTICLE 55 (Reduction of the parties to a multilateral treaty below the number necessary for its entry into force)

25. The CHAIRMAN invited the Special Rapporteur to introduce draft article 55 (A/CN.4/319), which read:

Article 55. Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

26. Mr. REUTER (Special Rapporteur) said that draft article 55 was identical with the corresponding article

[5] For consideration of the texts proposed by the Drafting Committee, see 1576th meeting.

of the Vienna Convention. He emphasized that the words "by reason only" were intended to show that other reasons could result in the termination of a multilateral treaty when a party withdrew from it, although that was rare in the case of general multilateral treaties. On the other hand, restricted multilateral treaties might lose their object and purpose if a single one of the parties withdrew. When preparing the draft articles on reservations, the Commission had already considered the case where several States and an international organization concluded a treaty for the purpose of providing technical assistance to a State through the organization. As the organization would assume functions essential to the application of the treaty, the treaty would terminate if the organization ceased to be a party to it. Although such cases did not seem to have arisen yet, they must be taken into account, and the article under consideration was justified.

27. Mr. USHAKOV pointed out that a treaty concluded between States and international organizations could contain a provision making its entry into force conditional on ratification by a minimum number of States and a minimum number of organizations. That case was not covered by the wording of the article under consideration.

28. Mr. REUTER (Special Rapporteur) admitted that that possibility, although somewhat theoretical, could be mentioned in the commentary to article 55 or taken into consideration in the text of the article. In the latter case, the text would have to be followed by a phrase on the following lines: "whether this number is expressed in relation to the total number of parties or is fixed in consideration of their nature".

29. Sir Francis VALLAT said that draft article 55 was rather unusual, since in modern conventions it was usually the number of instruments of ratification or acceptance deposited, not the number of parties, that was the key factor in bringing the convention into force. That was particularly true of multilateral treaties drafted under United Nations auspices. The depositing of an instrument of ratification was not necessarily the same thing as becoming a party to the treaty, however, since there might be some delay in becoming a party. Certain maritime conventions, for instance, provided for an interval of perhaps 12 months between the date of ratification and the date of entry into force, to allow States time to make the necessary legislative arrangements. In such cases, the final provisions determined whether entry into force was to depend on the number of instruments of ratification deposited or on the number of parties.

30. As he saw it, it was not a question of synchronizing modern treaty practice with the draft article, since the Commission was bound to use the test of parties. One of the advantages of using the term "parties" was that, under the definitions that had been provisionally adopted, it would cover both States and international organizations. Theoretically, however, the possibilities of variation were quite considerable. On the one hand, a treaty might be open to States and international organizations without distinction, in which case the number of instruments of ratification or acceptance would be the decisive factor in bringing the treaty into force. On the other hand, there certainly had been and would be cases in which the very existence of a multilateral treaty depended on an international organization becoming a party. It seemed to him that the draft articles would have no relevance in such cases, because the treaty would come into force only when the international organization concerned and, in addition, a certain number of States, had become parties or deposited their instruments. In other words, something other than the question of number was involved. As long as it was merely a question of number, however, it did not matter whether the party happened to be an international organization or a State.

31. Logically, therefore, rather than seek to redraft the article, which would only add to the complications, it would be better to bring out those points in the commentary, stressing in particular that the draft article dealt only with the mere fact that the number of parties fell below that necessary for the entry into force of a multilateral treaty.

32. Mr. REUTER (Special Rapporteur) noted that the comments of the members of the Commission concerned mainly the commentary to draft article 55, which ought to bring out the usefulness of the provision.

33. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 55 to the Drafting Committee.

It was so decided. [6]

ARTICLE 56 (Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal)

34. The CHAIRMAN invited the Special Rapporteur to introduce draft article 56 (A/CN.319), which read:

Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(*a*) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(*b*) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than 12 months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

35. Mr. REUTER (Special Rapporteur) pointed out that the United Nations Conference on the Law of Treaties had had to decide whether a treaty that con-

[6] For consideration of the text proposed by the Drafting Committee, see 1576th meeting.

tained no provision regarding its termination and did not provide for denunciation or withdrawal could be subject to denunciation or withdrawal. It had been possible to regard treaties as eternal, in accordance with the principle *pacta sunt servanda,* or, on the contrary, to consider that each party could withdraw when it wished, which would have deprived treaties of all meaning. Subject to the reservation of a fundamental change of circumstances, the Conference had taken an intermediate position: in principle, such treaties could not be subject to denunciation or withdrawal unless it was established that the parties had intended to admit the possibility of denunciation or withdrawal, or unless a right of denunciation or withdrawal might be implied from the nature of the treaty. The second condition had given rise to much controversy at the Conference.

36. Because of that second condition, he had hesitated a long time before proposing an article 56 that was identical with the corresponding article of the Vienna Convention. It was indeed open to question whether there existed any treaties concluded between States and international organizations whose nature might imply a right of denunciation or withdrawal. Personally, he believed that headquarters agreements, for example, might be of such a nature. Every international organization had the right to choose its headquarters as provided in its constituent instrument, and it could not be supposed that the competent organs of an organization intended to renounce that right when concluding a headquarters agreement. Conversely, was it conceivable that a headquarters agreement could give a State acting as host to an organization the right to keep that organization's headquarters in its territory? From the legal point of view, it could be accepted that it was in the nature of a headquarters agreement to be subject to denunciation by the organization concerned. It was indeed difficult to admit that an organization could lose its right to choose its own headquarters. In none of the headquarters agreements he had examined had he found either a duration clause or a denunciation clause. In short, the compromise solution embodied in article 56 of the Vienna Convention also seemed valid in the context of the draft articles.

37. Mr. USHAKOV, referring to paragraph 1 (*a*), pointed out that, in the case of a treaty between international organizations, the denunciation or withdrawal mentioned in that provision would be the act of any international organization party to the treaty. In the case of a treaty between States and international organizations, on the other hand, the denunciation or withdrawal might be made only by an international organization or only by a State. The point would have to be clarified, if not in the text of the article then at least in the commentary.

38. Mr. REUTER (Special Rapporteur) illustrated that point by an example. Supposing six States and an international organization concluded a technical assistance treaty which the international organization was responsible for implementing. In that case, the right to denounce the treaty or withdraw from it was conferred on the international organization, but not on the States parties. In the opposite case, it would be the States, but not the international organization, that could denounce the treaty or withdraw from it. That question could certainly be considered by the Drafting Committee or dealt with in the commentary.

39. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 56 to the Drafting Committee.

It was so decided. [7]

ARTICLE 58 (Suspension of the operation of a multilateral treaty by agreement between certain of the parties only)

40. The CHAIRMAN invited the Special Rapporteur to introduce draft article 58 (A/CN.4/319), which read:

Article 58. Suspension of the operation of a multilateral treaty by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(*a*) the possibility of such a suspension is provided for by the treaty; or

(*b*) the suspension in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1(*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

41. Mr. REUTER (Special Rapporteur) said that, as indicated in the commentary, draft article 58 was identical with the corresponding article of the Vienna Convention. He pointed out that articles 41 and 58 of the Vienna Convention were perfectly parallel. The provisions concerning agreements *inter se* to suspend the operation of a multilateral treaty were exactly the same as the provisions concerning agreements *inter se* to modify a multilateral treaty. There was the same correspondence between draft article 58 and draft article 41, which the Commission had examined at its thirtieth session [8] and for which the Drafting Committee had just adopted variant II. That variant followed the text of the Vienna Convention, whereas variant I departed from it by providing for three categories of multilateral treaties. In his view, the choice made by the Drafting Committee in deciding to follow the text of the Vienna Convention for article 41 predetermined the wording of draft article 58. He therefore suggested that that draft article 58 be referred to the Drafting Committee.

[7] *Idem.*

[8] *See Yearbook... 1978,* vol. I, p. 185, 1508th meeting, para. 28.

42. Mr. USHAKOV said that draft article 58 raised the same problem as article 58 of the Vienna Convention: the title referred to "suspension of the operation of a multilateral treaty", which seemed to indicate that the whole treaty could be suspended, whereas paragraphs 1 and 2 dealt only with suspension of the operation of certain provisions of the treaty, which implied that the treaty subsisted. Apart from that inconsistency, however, draft article 58 was acceptable and could be referred to the Drafting Committee.

43. Mr. REUTER (Special Rapporteur) thought Mr. Ushakov was right and that the title of article 58 of the Vienna Convention should have read: "Suspension of the operation *of provisions* of a multilateral treaty by agreement between certain of the parties only". For his part, he had not wished to depart from the text of the Convention.

44. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 58 to the Drafting Committee.

It was so decided. [9]

ARTICLE 59 (Termination or suspension of the operation of a treaty implied by conclusion of a later treaty)

45. The CHAIRMAN invited the Special Rapporteur to introduce draft article 59 (A/CN.4/319), which read:

Article 59. Termination or suspension of the operation of a treaty implied by conclusion of a later treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

(*a*) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(*b*) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

46. Mr. REUTER (Special Rapporteur) pointed out that draft article 59, which was identical with the corresponding article of the Vienna Convention, dealt with the intention of the parties and therefore concerned the purely consensual aspects of international agreements.

47. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 59 to the Drafting Committee.

It was so decided. [10]

ARTICLE 60 (Termination or suspension of the operation of a treaty as a consequence of its breach)

48. The CHAIRMAN invited the Special Rapporteur to introduce draft article 60 (A/CN.4/319), which read:

Article 60. Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(*a*) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State or international organization, or

(ii) as between all the parties;

(*b*) a party especially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State or international organization;

(*c*) any party other than the defaulting State or international organization to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(*a*) a repudiation of the treaty not sanctioned by the present articles; or

(*b*) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

49. Mr. REUTER (Special Rapporteur) said that draft article 60 followed the corresponding article of the Vienna Convention with a few minor drafting changes. It was a very important article which, although not purporting to deal with the problem of responsibility, considered the consequences that a breach of a bilateral or a multilateral treaty might have on relations between the parties.

50. Mr. USHAKOV thought it might be better to deal separately with treaties between States and international organizations and treaties between international organizations only. However, he left it to the Drafting Committee to decide that point.

51. Sir Francis VALLAT saw no need to distinguish in the draft article between the different categories of treaties, since the question of the consequences of a breach of a treaty by a State or an international organization did not really depend on the nature of an international organization. That being so, there was no

[9] For consideration of the text proposed by the Drafting Committee, see 1576th meeting.

[10] *Idem.*

need to recast the article, although some minor drafting points might require attention.

52. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 60 to the Drafting Committee.

It was so decided.[11]

The meeting rose at 5.30 p.m.

[11] *Idem.*

1560th MEETING

Tuesday, 26 June 1979, at 10.15 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Bedjaoui, Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Succession of States in respect of matters other than treaties (A/CN.4/322 and Corr.1 and Add.1 and 2)

[Item 3 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE A (Transfer of State archives)

1. The CHAIRMAN invited the Special Rapporteur to introduce his eleventh report on succession of States in respect of matters other than treaties (A/CN.4/322 and Corr.1 and Add.1 and 2), and in particular draft article A (*ibid.*, para. 89), which read:

Article A. Transfer of State archives

1. Except as otherwise agreed or decided, and subject to the provisions of paragraph 3 below, State archives of whatever nature that relate exclusively or principally to the territory to which the succession of States relates, or that belong to that territory, shall pass to the successor State.

2. The successor State will permit any appropriate reproduction of the State archives that pass to it, for the purposes of the predecessor State [or of any interested third State].

3. Except as otherwise agreed or decided, the predecessor State will keep the originals of the State archives referred to in paragraph 1 above, if they are archives of sovereignty, subject to the proviso that it will authorize any appropriate reproduction thereof for the purposes of the successor State.

2. Mr. BEDJAOUI (Special Rapporteur) drew attention to the fact that, by its resolution 33/139, adopted at its thirty-third session, the General Assembly had requested the Commission to complete, at its thirty-first session, the first reading of the draft articles on succession of States in respect of State property and State debts. At the Commission's previous session, some members had also expressed the hope that the draft articles would be supplemented by provisions on succession to State archives. By submitting, in his eleventh report, six draft articles on succession to State archives, he had endeavoured to comply with those two requests. Since the problem of succession to State archives was a complex and difficult one, he believed that the Commission should help States to avoid disputes concerning archives by proposing rules on the subject. He had also seen in that problem an opportunity of enriching the draft articles. Lastly, if the draft articles were to be submitted to a diplomatic conference, he believed it would be better for the conference to have too much material before it rather than too little.

3. The adoption of provisions on succession to State archives was further justified on four grounds related to the specific character of State archives and to the special problems they raised in the case of a succession of States. First, although they were movable property of the type whose transfer had already been considered by the Commission, State archives had the particular characteristic of being property that could be reproduced, which facilitated their transfer by making it possible to satisfy both the predecessor State and the successor State. Secondly, State archives constituted a common heritage. It was therefore necessary, while respecting the integrity of a collection of archives, to recognize the rights of all States that shared in that heritage. Thirdly, while it was possible to conceive of a successor State existing in the absence of certain movable or immovable property—for example, a navy—without prejudice to its viability, it was not possible to conceive of a State without archives. Fourthly, archives could be the documentary evidence of movable or immovable property transferred to the successor State or retained by the predecessor State.

4. The question of State archives had given rise to extensive discussion, of which he had endeavoured to give some account in his eleventh report. Although international organizations had never concerned themselves with the fate of other movable property in the event of a succession of States, they had endeavoured to alert States to the problem of archives; that was true not only of UNESCO but also of the United Nations and other international organizations such as OAU, or the conferences of the non-aligned countries. It would therefore be regrettable if the Commission did not adopt provisions on such an important question.

5. To facilitate the Commission's task and enable it to complete its first reading of the draft articles on State property and State debts at the current session, as the General Assembly had requested, he proposed that, while the Commission was examining the six