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Summary record of the 1296th meeting

Topic:
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force at the date of the succession of States". Its paragraphs 1, 2, 3 and 4 were based on the same paragraphs of article 13. Under conditions similar to those applying to newly independent States, those provisions enabled a successor State emerging from a uniting of States to establish, by giving notice in writing, its status as a party or as a contracting State to a multilateral treaty which had not been in force at the date of the succession.

48. Paragraph 5 of article 26 *bis* reflected the provisions of paragraph 2 of article 26 as now proposed by the Drafting Committee. Paragraph 6 embodied the exception set out in paragraph 1(*b*) of article 26.

49. The second new article proposed by the Drafting Committee, provisionally numbered 26 *ter*, was entitled: "Effects of a uniting of States in the case of treaties signed by a predecessor State subject to ratification, acceptance or approval". Paragraphs 1, 2 and 3 of that article were based on paragraphs 1, 3 and 4 of article 14, but it would be noted that paragraph 1 of article 26 *ter* did not contain the proviso that the predecessor State intended by its signature "that the treaty should extend to the territory to which the succession of States relates". That proviso, which had its place in paragraph 1 of article 14, had clearly no relevance to a uniting of States. Since the provisions of paragraph 2 of article 14 related exclusively to that proviso, they had also been omitted from the text of article 26 *ter* now proposed.

50. The provisions of paragraphs 4 and 5 of article 26 *ter* were similar to those of paragraphs 5 and 6 of article 26 *bis*.

51. Mr. USHAKOV proposed that the opening words of the titles of all three articles should be redrafted to read: "Effects of a uniting of States in respect of treaties...".

52. Sir Francis VALLAT (Special Rapporteur) supported that proposal which was in line with the language consistently used throughout the draft.

53. Mr. USHAKOV said that the expression "other State party" used in article 26, was not altogether suitable in the case of a uniting of States, because of the way in which that term was defined in paragraph 1(*m*) of article 2. The concluding words of the definition: "a treaty in force ... in respect of the territory to which that succession of States relates" made the term inappropriate.

54. He suggested that the Drafting Committee should solve that problem during the final editing, either by using different wording in article 26, or by amending the definition in paragraph 1(*m*) of article 2.

55. Sir Francis VALLAT (Special Rapporteur) said it would be very difficult to solve the problem by altering the passages containing references to the "other State party". It would be better to deal with the problem in article 2.

56. The CHAIRMAN suggested that, on the understanding that the Drafting Committee would deal with that point at the final editing stage, the Commission should approve articles 26, 26 *bis* and 26 *ter*, as proposed by the Drafting Committee, with the amendment to the titles proposed by Mr. Ushakov and accepted by the Special Rapporteur.

It was so agreed.

The meeting rose at 11.15 a.m.

1296th MEETING

Thursday, 18 July 1974, at 3.10 p.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Succession of States in respect of treaties

(A/CN.4/275 and Add.1 and 2; A/CN.4/278 and Add.1-6; A/CN.4/L.209/Add.4 and 5; A/CN.4/L.212, L.215, L.221 and L.222; A/8710/Rev.1)

[Item 4 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Commission to consider articles 27 to 31 *ter*, as proposed by the Drafting Committee (A/CN.4/L.209/Add.4). He then called on the Chairman of the Drafting Committee to introduce articles 27 and 28 together.

ARTICLES 27[1] AND 28[2]

2. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following titles and texts for articles 27 and 28:

Article 27

Succession of States in cases of separation of parts of a State

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(*a*) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(*b*) any treaty in force at the date of the succession of States in respect only of a part of the territory of the predecessor State that has become a successor State continues in force in respect of that successor State alone.

2. Paragraph 1 does not apply if:

(*a*) the States concerned otherwise agree; or

(*b*) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be

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[1] For previous discussion see 1283rd meeting, para. 17.

[2] For previous discussion see 1284th meeting, para. 1.

incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

3. Notwithstanding paragraph 1, if a part of the territory of a State separates from it and becomes a State in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State, the successor State shall be regarded for the purposes of the present articles in all respects as a newly independent State.

Article 28

Position if a State continues after separation of part of its territory

When, after separation of any part of the territory of a State, the predecessor State continues to exist, any treaty which at the date of the succession of States was in force in respect of the predecessor State continues in force in respect of its remaining territory unless:

(*a*) it is otherwise agreed;

(*b*) it is established that the treaty related only to the territory which has separated from the predecessor State; or

(*c*) it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

3. With the adoption of articles 26, 26 *bis* and 26 *ter*, the Commission had completed the examination of questions arising out of a uniting of States. It now had to consider the reverse situation, namely, the separation from a State of a part or parts of its territory.

4. In the 1972 text, article 27[3] had been entitled "Dissolution of a State". It had been based on the assumption that parts of a State became individual States and that the original State ceased to exist. Paragraph 1 of the article had comprised three sub-paragraphs laying down rules which, by hypothesis, concerned only the successor States, that was to say the parts which had become individual States. Under sub-paragraph (*a*), any treaty concluded by the predecessor State in respect of its entire territory continued in force in respect of each successor State emerging from the dissolution. Under sub-paragraph (*b*), any treaty concluded by the predecessor State in respect only of a particular part of its territory which had become an individual State continued in force in respect of that State alone. Sub-paragraph (*c*) had dealt with the case of dissolution of a State previously constituted by the uniting of two or more States. It had referred, therefore, to two distinct and not simultaneous successions of State, which, in the Drafting Committee's view, should be considered separately. Accordingly, and in conformity with a decision it had taken in a similar case in regard to article 26,[4] the Committee had decided that the provisions of sub-paragraph (*c*) should be deleted.

5. Paragraph 2 of article 27 had listed two exceptions to the rules laid down in paragraph 1.

6. Article 28 of the 1972 draft[5] had been entitled "Separation of part of a State". It had been based on the assumption that the part which separated became an individual State, but—and that was the main difference between it and article 27—that the predecessor State continued to exist. Article 28 had laid down two rules. The first, set out in the introductory part of paragraph 1, concerned the predecessor State. It laid down that any treaty which was in force in respect of that State continued to bind it in relation to its remaining territory. Exceptions to that rule were listed in sub-paragraphs (*a*) and (*b*) of paragraph 1. The second rule, set out in paragraph 2, concerned the successor State and laid down that that State was to be considered as being in the same position as a newly independent State in relation to any treaty which, at the date of the separation, had been in force in respect of the territory now under its sovereignty.

7. The Drafting Committee had observed that most of the examples given in the commentary (A/8710/Rev.1, chapter II, section C) in support of the second rule in article 28 concerned the separation from a State of what would now be called a dependent territory. It had therefore decided that the scope of the rule should be limited to cases in which the separation occurred in circumstances that were essentially of the same character as those existing in the case of the formation of a newly independent State.

8. After taking the two decisions he had mentioned, the Drafting Committee had sought to present the provisions of articles 27 and 28 in a clearer and more systematic manner. It had come to the conclusion that they should be rearranged in two groups, the first containing the provisions concerning the successor State, and the second those concerning the predecessor State. With those considerations in mind, it had prepared the new texts it was now proposing to the Commission. Article 27, as proposed by the Committee, contained the provisions concerning the successor State, while article 28 contained those concerning the predecessor State.

9. The new article 27 was entitled "Succession of States in cases of separation of parts of a State". As stated in the opening clause, the article dealt with the case in which a part or parts of the territory of a State separated to form one or more States, whether or not the predecessor State continued to exist—in other words, whether or not it had been dissolved, to use the terminology of the 1972 draft. Thus the new article 27 covered both the situation dealt with in the former article 27 and the situation dealt with in the former article 28, but did so exclusively from the standpoint of the successor State.

10. Sub-paragraphs (*a*) and (*b*) of paragraph 1 reproduced, with some drafting changes, the rules set out in the corresponding sub-paragraphs of the former article 27. Paragraph 2 reproduced, again with drafting changes, the exceptions to those rules set out in paragraph 2 of the former article 27.

11. Paragraph 3 provided for a further exception to paragraph 1. That exception concerned successor States which separated from the predecessor State in circumstances essentially of the same character as those existing in the case of the formation of a newly independent State. It reflected paragraph 2 of the former article 28,

[3] See 1283rd meeting, para. 17.

[4] See 1295th meeting, para. 44.

[5] See 1284th meeting, para. 1.

with the limitation in scope which he had already mentioned.

12. The new text of article 28 submitted by the Drafting Committee was entitled "Position if a State continues after separation of part of its territory". As stated in the opening clause, the new text—like the former article 28—dealt with the case in which, after the separation of any part of the territory of a State, the predecessor State continued to exist; but it dealt with that case exclusively from the standpoint of the predecessor State.

13. The introductory part of the new text of article 28 reproduced, with several drafting changes, the rule laid down in the introductory part of paragraph 1 of the 1972 text; sub-paragraphs (*a*), (*b*) and (*c*) listed three exceptions to that rule. Sub-paragraph (*a*) corresponded to paragraph 1(*a*) of the 1972 text, sub-paragraph (*b*) to the first clause of paragraph 1(*b*) of that text and sub-paragraph (*c*) to the second clause of paragraph 1(*b*).

14. Mr. TAMMES said that the new texts of articles 27 and 28 had solved a number of problems; the precarious distinction between dissolution and separation had disappeared and a uniform régime of continuity had been established for both cases, with the exception referred to in paragraph 3 of article 27. He congratulated the Drafting Committee on having taken that courageous step in the progressive development of international law.

15. He thought, however, that the criterion for the application of the clean slate rule in paragraph 3 of article 27 would continue to present serious practical difficulties which could not easily be resolved by any method for the settlement of disputes. That criterion was the existence of circumstances which were essentially of the same character as those existing in the case of the formation of a newly independent State. Reference to the 1972 commentary to article 28 (A/8710/Rev.1, chapter II, section C) showed, however, that such circumstances differed essentially from case to case. Moreover, no use could be made of the definition of newly independent State given in article 2, paragraph 1(*f*), since article 27 referred to the way in which such a State was formed. And it appeared from paragraph (6) of the 1972 commentary to article 2—which he hoped was still open to revision—that the term "newly independent State" was used there, precisely, to exclude cases of separation and dissolution, whereas in article 27, paragraph 3, the term was used for the purpose of an analogy.

16. It was to be feared that, as the Special Rapporteur had predicted when summing up the discussion, article 27 would not be applied in practice.[6] After all, the separated State would not be automatically bound by the future convention, which meant that it could choose to be governed either by the customary rule applicable to secession, that was to say by the clean slate principle, or by the progressive rule of *ipso jure* continuity, according to whether it considered itself as emerging from a revolutionary or an evolutionary secession. It seemed to him, therefore, that the commentary to article 27 might usefully refer to the possibility of an evolutionary separation after which the new State or newly independent State, which might not be fully responsible for all its international relations, nevertheless was constitutionally entitled to express its consent to be bound by a treaty. The inclusion of such an explanation in the commentary might be of great assistance in the otherwise difficult application of article 27.

17. Sir Francis VALLAT (Special Rapporteur) said that any suggestions Mr. Tammes could make for inclusion in the commentary would be welcome; he was fully aware of the difficulty of providing a clear-cut and workable test for the case referred to in paragraph 3 of article 27.

18. Mr. KEARNEY said there was much merit in what Mr. Tammes had said, since the test specified in paragraph 3 presented problems that would be difficult to solve in practice. He did not think, however, that their solution would be more difficult than that of the problems which would have been encountered in making the distinction between separation and dissolution provided for in the 1972 draft. One of the reasons why he had again submitted a proposal concerning the settlement of disputes (A/CN.4/L.221) had been, precisely, to meet the kind of difficulty to which Mr. Tammes had drawn attention and which seemed to be a serious potential source of disputes.

19. Mr. USHAKOV observed that in view of the diversity of cases covered by paragraph 3 of article 27, there were no objective criteria for determining what circumstances were essentially of the same character as those existing in the case of the formation of a newly independent State. Some of those cases would be easily settled in practice, while others would raise insurmountable difficulties. Hence, due consideration should be given to the question raised by Mr. Tammes.

20. With regard to the drafting of article 27, he hoped that the Drafting Committee would review the French translations of the word "concerned" in paragraph 2(*a*) and the word "character" in paragraph 3.

21. Mr. REUTER said that the comments made by Mr. Tammes on paragraph 3 were due to the fact that there was no legal criterion applicable to decolonization and that the Commission was not afraid of adopting articles containing purely protestative clauses.

22. The CHAIRMAN suggested that the Commission should approve articles 27 and 28, as proposed by the Drafting Committee, and that the comments made by members should be reflected in the commentary.

It was so agreed.

ARTICLES 28 *bis* AND 28 *ter*

23. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the new articles 28 *bis* and 28 *ter*, which read:

Article 28 bis

Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State

1. Subject to paragraphs 3 and 4, a successor State falling within article 27, paragraph 1, may by giving notice, establish its status as a

[6] See 1284th meeting, para. 53.

contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates.

2. Subject to paragraphs 3 and 4, a successor State falling within article 27, paragraph 1, may by giving notice, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

4. If the treaty is one falling within the category mentioned in article 12, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

Article 28 ter

Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling within article 27, paragraph 1, may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

3. If the treaty is one falling within the category mentioned in article 12, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

24. Mr. HAMBRO (Chairman of the Drafting Committee) said that article 27, both in the 1972 text and in the new version, related exclusively to treaties which were in force at the date of the succession of States. Consequently, in the case of separation of parts of a State, the successor State would not be able to inherit a treaty which had not been in force at that date, by procedures similar to those provided by articles 13 and 14 for newly independent States. In articles 26*bis* and 26*ter* the Drafting Committee had extended those procedures to successor States emerging from a uniting of States.

25. In that case, too, the Committee had come to the conclusion that there could be no valid reason for a radical difference in treatment between two categories of successor States: on the one hand, newly independent States and those emerging from a uniting of States, and on the other, successor States in cases of separation of parts of a State. It had accordingly prepared two new articles which it had numbered provisionally 28*bis* and 28*ter*

26. Article 28*bis* adapted the provisions of article 13 to the case of a successor State falling within article 27, paragraph 1, that was to say a successor State emerging from a separation of parts of a State. Article 28*ter* adapted the provisions of article 14 to the case of such a successor State. Since members were now familiar with that drafting technique, the two articles should require no further comment.

27. Mr. USHAKOV, referring to paragraph 1 of article 28*bis*, said he doubted the advisability of using the conditional mood in the phrase "if it had been in force at that date, would have applied in respect of the territory", since in the case covered by that provision it seemed that the predecessor State had clearly intended the treaty to apply in respect of the territory in question.

28. Mr. HAMBRO (Chairman of the Drafting Committee) said he agreed with Mr. Ushakov. The grammatical point he had raised had, however, been exhaustively discussed in the Drafting Committee.

29. Mr. ELIAS proposed that the Commission should approve articles 28*bis* and 28*ter*, as proposed by the Drafting Committee.

It was so agreed.

ARTICLES 29, 30[7] AND 30*bis*

30. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce articles 29, 30 and 30*bis*, which read:

Article 29

Boundary régimes

A succession of States does not as such affect:

(*a*) a boundary established by a treaty; or

(*b*) obligations and rights established by a treaty and relating to the régime of a boundary.

Article 30

Other territorial régimes

1. A succession of States does not as such affect:

(*a*) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;

(*b*) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States shall not as such affect:

(*a*) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;

(*b*) rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

Article 30 bis

Questions relating to the validity of a treaty

Nothing in the present articles shall be considered as prejudicing in any respect a question relating to the validity of a treaty.

[7] For previous discussion see 1286th meeting, para. 47.

31. Mr. HAMBRO (Chairman of the Drafting Committee) said that part V of the 1972 draft (A/8710/Rev.1, chapter II, section C), entitled "Boundary régimes or other territorial régimes established by a treaty" had consisted of articles 29 and 30, which had given rise to long and difficult debates. Several members had suggested the addition of a new article stating that nothing in article 29 or 30 should be considered as prejudicing in any respect a question relating to the validity of a treaty. Others had objected to the wording of the proposed new article, which, in their view, would imply that any article other than 29 or 30 could prejudice questions relating to the validity of treaties. Finally, thanks to the goodwill of all concerned, a compromise had been reached in the Drafting Committee, whereby the additional article would contain no reference to any specific provision of the draft and would be worded in general terms. The commentary, however, would explain the history of the article and would point out its relevance to articles 29 and 30. The additional article—numbered provisionally 30*bis*—and articles 29 and 30 would be transferred to part I of the draft, entitled "General provisions".

32. The only change made by the Drafting Committee in article 29 had been to replace the word "shall", in the first line of the English text, by the word "does". The object of that change was to emphasize that the article was in the nature of what the French called *une constatation de fait*. The Committee had also considered replacing the words "relating to", in sub-paragraph (*b*) by the words "forming an integral part of". It had finally decided against that change because it would be very difficult in practice to determine what did or did not form an integral part of the régime of a boundary.

33. As in the case of article 29, and for the same reasons, the Drafting Committee had replaced the word "shall", in article 30, by the word "does". In paragraph 1(*a*) of article 30 it had deleted the adverb "specifically", which added nothing to the text and might give rise to discussion, and had replaced the words "a particular territory" by "any territory". The phrase "rights established ... specifically for the benefit of a particular territory" used in the 1972 text, could be interpreted as excluding transit rights. Similar changes had been made in paragraph 1(*b*) and in paragraph 2.

34. The Committee had considered the possibility of inserting the words "or of its inhabitants" after the words "for the benefit of any territory of a foreign State" in paragraph 1(*a*), but had decided against doing so because, in the last analysis, rights and obligations were always established for the benefit of the inhabitants of a territory. Furthermore, any qualification of the expression used in the 1972 text might limit the scope of that expression.

35. The CHAIRMAN suggested that the Commission should approve articles 29, 30 and 30*bis* as proposed by the Drafting Committee, and their transfer to part I of the draft.

It was so agreed.

ARTICLES 31[8] AND 31 *bis*

36. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce articles 31 and 31*bis*, in part VI, which read:

PART VI

MISCELLANEOUS PROVISIONS

Article 31

Cases of State responsibility and outbreak of hostilities

The provisions of the present articles shall not prejudge any question that may arise in regard to the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States.

*Article 31*bis

Cases of military occupation

The provisions of the present articles do not prejudge any question that may arise in regard to a treaty from the military occupation of a territory.

37. Mr. HAMBRO (Chairman of the Drafting Committee) said that in the text proposed by the Drafting Committee, part VI, the title of which remained unchanged, consisted of three articles, provisionally numbered 31, 31*bis* and 31*ter*.

38. Article 31 in the 1972 text[9] had excluded three specific matters from the scope of the draft articles. Two of those matters—State responsibility and the outbreak of hostilities—were excluded by article 73 of the Vienna Convention on the Law of Treaties[10] from the scope of that Convention. As had been pointed out in the 1972 commentary (A/8710/Rev.1, chapter II, section C), both those matters might have an impact on the law of succession of States in respect of treaties, and it was therefore necessary to exclude them from the scope of the draft articles. The third matter—military occupation—was of a different kind and it was difficult to see what impact it might have on the law of succession of States in respect of treaties.

39. Strictly speaking, no exclusion of military occupation from the scope of the draft articles was required. But although military occupation was not a succession of States, it might raise analogous problems and that might induce an occupying power to attempt to apply, by analogy, some of the rules in the draft articles. A formal exclusion of military occupation from the scope of the draft articles might serve as a warning against such attempts. In order to underline the special nature of such an exclusion, the Drafting Committee had decided that it should form a separate article.

40. The Committee was accordingly submitting two articles, numbered 31 and 31*bis*, in place of article 31 of the 1972 draft. Article 31 reproduced, with minor drafting changes, the provisions excluding State responsibility and the outbreak of hostilities. Article 31*bis* repro-

[8] For previous discussion see 1290th meeting, para. 1.

[9] *Ibid.*

[10] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 299.

duced, with one drafting change, the provision excluding military occupation; that change consisted in the substitution of the words "do not prejudge" for "shall not prejudge". The purpose of that substitution was to underline that article 31*bis* was in the nature of a *constatation de fait*. Members would observe that the Committee had retained the expression "shall not prejudge" in article 31.

41. Sir Francis VALLAT (Special Rapporteur) said that the division into two articles had been made in order to take into account a point made by Mr. Ago, who had stressed that while it might be reasonable to include an article on the lines of article 73 of the Vienna Convention, it was not correct to refer to succession of States in connexion with military occupation.[11] It was for that reason that article 31*bis* used the words "in regard to a treaty", not "in regard to the effects of a succession of States".

42. The CHAIRMAN suggested that the Commission should approve articles 31 and 31*bis*, as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 31*ter*

43. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce article 31*ter*, which read:

*Article 31*ter

Notification

1. Any notification under article ... or ... must be made in writing.

2. If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification shall:

(*a*) be transmitted by the successor State to the depositary or, if there is no depositary, to the parties or the contracting States;

(*b*) be considered to be made by the successor State on the date on which it has been received by the depositary or, if there is no depositary, on the date on which it has been received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification or any communication made in connexion therewith by the successor State.

5. Subject to the provisions of the treaty, such notification or communication shall be considered as received by the State for which it was intended only when the latter State has been informed by the depositary.

44. Mr. HAMBRO (Chairman of the Drafting Committee) said that article 31*ter* was the new article which, for the reasons he had explained when introducing article 22[12] the Committee had decided to devote to notifications other than notifications of succession. The Committee had been anxious to use the word "notice" in article 31*ter* in order to distinguish between notification of succession and other notifications. Unfortunately it would have been impossible to maintain that distinction in the French text and, he believed, in the Spanish. In French, "notice" could be translated only by *notification*, the term which was used in article 17, on notification of succession. All substitutes for *notification* which had been suggested, such as *signification*, *avis*, *notice*, had proved unacceptable. The Committee had decided, therefore, to use the word "notification" in the English text of article 31*ter*.

45. The CHAIRMAN suggested that the Commission should approve article 31*ter*, as proposed by the Drafting Committee, and decide later on its exact place in the draft.

It was so agreed.

ARTICLE 2[13]

46. The CHAIRMAN invited the Commission to consider article 2, as proposed by the Drafting Committee (A/CN.4/L.209/Add.5).

47. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following title and text for article 2:

Article 2

Use of terms

1. For the purposes of the present articles:

(*a*) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(*b*) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(*c*) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(*d*) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(*e*) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(*f*) "newly independent State" means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

(*g*) "notification of succession" means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty;

(*h*) "full powers" means in relation to a notification of succession or a notification referred to in article 31*ter* a document emanating from the competent authority of a State designating a person or persons to represent the State for communicating the notification of succession or, as the case may be, the notification;

(*i*) "ratification", "acceptance" and "approval" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(*j*) "reservation" means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty or when making a notification of succession to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

[11] See 1290th meeting, paras. 5-7.

[12] See previous meeting, para. 5.

[13] For previous discussion see 1264th meeting, para. 46.

(*k*) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force:

(*l*) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(*m*) "other State party" means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates;

(*n*) "international organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

48. The Drafting Committee had made only minor changes in the provisions of article 2 (A/8710, chapter II, section C). Those changes concerned sub-paragraphs (*b*), (*f*), (*g*) and (*h*) of paragraph 1.

49. The first change—concerning sub-paragraph (*b*)—affected the French and Spanish texts only. It consisted in the replacement of the words "*du territoire*" and "*del territorio*" by "*d'un territoire*" and "*de un territorio*". The other changes affected the texts in all four languages.

50. In sub-paragraph (*f*), defining the term "newly independent State", the Committee had replaced the words "means a State" by "means a successor State", because a newly independent State was a successor State for the purposes of the present articles. The commentary would emphasize that the definition applied to all types of newly independent States, including those formed from two or more territories.

51. In sub-paragraph (*g*), defining the term "notification of succession", the Committee had deleted the words "to the parties, or as the case may be, contracting States or to the depositary". Those words were unnecessary, since article 17 specified to whom the notification had to be transmitted.

52. The Committee had made two changes in sub-paragraph (*h*), defining "full powers". First, it had extended the scope of the definition to cover not only notifications of succession, but also the other kinds of notification referred to in article 31*ter*. Secondly it had replaced the word "making", in the last line of the sub-paragraph, by the word "communicating", since that was the word used both in article 17 and in article 31*ter*.

53. Mr. TSURUOKA, referring to paragraph 1(*f*), said he was not sure exactly what the Commission meant by a "newly independent State". It seemed to him that the Commission found itself obliged to use that expression without being able to define its exact meaning.

54. Sir Francis VALLAT (Special Rapporteur) said that the term "newly independent State" was one used for convenience throughout the draft. Reference was made in the draft to States which had been dependent territories and the definition made it clear that the newly independent States were former colonies, trust territories or territories whose foreign relations had been handled by another State. In the context of the United Nations, there could be very little doubt as to what the term meant.

55. Mr. USHAKOV said that article 6*bis* answered Mr. Tsuruoka's question. For the purposes of the future convention, newly independent States would be States which came into being after its entry into force.

56. The CHAIRMAN, speaking as a member of the Commission, said that since paragraph 1 contained a definition of "notification of succession", it would seem logical also to include a definition of "notification".

57. Mr. HAMBRO (Chairman of the Drafting Committee) said that that point had been discussed in the Drafting Committee, which had decided that a definition of "notification" was unnecessary, since it would merely be a repetition of articles 17 and 31*ter*.

58. Mr. ELIAS suggested that further discussion of that question should be deferred until the Commission had taken a final decision on the content of articles 17 and 31*ter*.

It was so agreed.

59. Mr. USHAKOV, referring to paragraph 1(*m*), pointed out that the expressions "other party" and "other State party" seemed to have been used without distinction in the draft. In his opinion, the former was sufficient.

60. Mr. HAMBRO (Chairman of the Drafting Committee) referring to sub-paragraph (*n*), said that one Government, in its comments, had recommended the use of the expression "international intergovernmental organization" (A/CN.4/278/Add.2, para. 155), but the Committee had decided against it.

61. Mr. EL-ERIAN suggested that the commentary should state that the expression "international organization" was the one normally used in drafts prepared by the Commission.

It was so agreed.

62. The CHAIRMAN suggested that the Commission should approve article 2, as proposed by the Drafting Committee.

It was so agreed.

ARTICLES 6 AND 6*bis*[14]

63. Mr. HAMBRO (Chairman of the Drafting Committee) said that at its 1286th meeting, the Commission had referred articles 6 and 6*bis* back to the Drafting Committee.[15] After careful reconsideration of all the problems involved, the Committee had adopted, on second reading, the articles it was now proposing to the Commission (A/CN.4/L.222) which read:

Article 6

Cases of succession of States covered by the present articles

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

[14] For previous discussion see 1285th meeting, para. 15.

[15] See 1286th meeting, para. 26.

*Article 6*bis

Non-retroactivity of the present articles

Without prejudice to the application of any of the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles, the present articles apply only in respect of a succession of States which has occurred after the entry into force of these articles except as may otherwise be agreed.

64. In article 6, the Committee had made no change in the title or the text it had adopted on first reading. Members would recall that they were identical with the title and text of article 6 in the 1972 draft.

65. The CHAIRMAN suggested that the Commission should approve article 6, as proposed by the Drafting Committee.

It was so agreed.

66. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Committee had retained the title it had previously given to article 6*bis*, but had made two changes in the text of the article.[16] The first change, which was of a stylistic nature, consisted in replacing the words "the articles apply only to the effects of a succession of States" by the words "the present articles apply only in respect of a succession of States". The second change consisted in the addition of the words "except as may otherwise be agreed" at the end of the article; the purpose of that change was to introduce a measure of flexibility by adding a clause such as was referred to in the opening phrase of article 28 of the Vienna Convention on the Law of Treaties.

67. Mr. KEARNEY said he would not object to article 6*bis*, but wished to state once more that he considered the article unnecessarily broad.

68. Mr. ELIAS said that unless more arguments were advanced to justify that article, he would vote against it, since it seemed likely to detract from the force of article 6.

69. Mr. USHAKOV said it was perfectly clear from the present wording that the articles would apply only in respect of a succession of States which occurred after their entry into force. It must, of course, be a succession of States which occurred in conformity with international law, and, in particular, with the principles of international law embodied in the Charter of the United Nations.

70. The question was, to what situations was the present draft intended to apply? Was it to apply to past situations, or to future situations which would be governed by the convention resulting from the present articles? In his opinion, the draft could only apply to situations arising in the future, after the entry into force of the rules of international law formulated in it. It was clearly impossible to apply the draft articles to a situation which had arisen previously.

71. Mr. EL-ERIAN said he had no objection to the substance of article 6*bis*, though he had some doubts about the method the Commission appeared to be following. In the present case, the Commission was stating rules of law without indicating which of them it regarded as constituting codification of international law and which as constituting progressive development.

72. The CHAIRMAN, speaking as a member of the Commission, said that if article 6*bis* was not included in the draft, the future convention would be governed, as far as retroactivity was concerned, by article 28 of the Vienna Convention of the Law of Treaties. But that article was drafted in such a way that it was unsuitable for transposition to the present draft, which dealt with an entirely different subject. He appreciated the point made by Mr. El-Erian, but he still believed that the adoption of article 6*bis* would facilitate the work of the future conference which would eventually adopt the convention on succession of States in respect of treaties.

73. Mr. THIAM said he must reiterate the reservations he had previously expressed regarding article 6*bis*. First, the Vienna Convention on the Law of Treaties already contained a provision stating the principle of the non-retroactivity of treaties. Secondly, the articles under consideration would add nothing to the draft, but would weaken its effect, particularly with regard to newly independent States. In most cases of decolonization up to the present, the predecessor State and the succcessor State had found practical means of overcoming the difficulties they had encountered.

74. Mr. RAMANGASOAVINA said that he too had expressed reservations about the need for article 6*bis*.

75. The CHAIRMAN said that the points made by Mr. Kearney, Mr. Elias, Mr. El-Erian, Mr. Thiam and Mr. Ramangasoavina would be duly recorded. He then put article 6*bis* to the vote.

*Article 6*bis *was approved by 8 votes to 4, with 5 abstentions.*

76. Mr. TABIBI, explaining his vote, said that during the earlier discussion of article 6*bis*, he had expressed views similar to those of his African and Asian colleagues. He had strong objections to articles 29 and 30,[17] however, and since those articles had now been included in the draft, he had abstained from voting against article 6*bis*, because it would weaken their effect.

ARTICLE 12*bis*[18]

77. The CHAIRMAN invited the Commission to resume consideration of the new article 12*bis* proposed by Mr. Ushakov, dealing with multilateral treaties of a universal character (A/CN.4/L.215).

78. Mr. USHAKOV observed that the Commission had not sufficient time to examine article 12*bis*. He would therefore prefer his proposal to be mentioned in the report, with an explanation that the Commission had not had time to study it. That would enable governments to take a position on the proposed article.

79. Mr. REUTER supported that suggestion. He himself was not opposed to the establishment of a special

[16] For previous text see 1285th meeting, para. 17.

[17] See 1287th meeting, para. 11 *et seq.*

[18] For previous discussion and text, see 1293rd meeting, para. 54.

régime for certain treaties, as proposed in Mr. Ushakov's article 12*bis*; but it was a delicate question which required thorough study. It was, of course, easy to give examples of multilateral treaties of a universal character which should benefit from such a special régime; but examples could also be given of treaties in that category to which the special régime could hardly be applied. For instance, the 1958 Geneva Conventions on the law of the sea were multilateral treaties of a universal character, but a rule under which they would remain in force for a newly independent State after the date of the succession of States would be very difficult to apply, since many newly independent States would refuse to be bound by them. On the other hand, there were treaties which, although not of a universal character, should benefit from the special régime provided for by article 12*bis*. He therefore agreed with Mr. Ushakov that it would be better to defer consideration of the question.

80. Mr. USHAKOV said he still thought that, even in the case of the Conventions on the law of the sea, it was preferable for multilateral treaties of a universal character to remain in force in respect of the territory to which the succession of States related, since it was always open to the newly independent State to give notice of termination if it so desired. Besides, most of the treaties covered by article 12*bis* were advantageous for newly independent States.

81. The CHAIRMAN invited members of the Commission to comment on the suggestion that Mr. Ushakov's proposal should be mentioned in the appropriate chapter of the Commission's report.

82. In reply to a question by Mr. ELIAS, he said that a suitable place to include the text of the draft article 12*bis* might perhaps be the commentary to article 12.

83. Sir Francis VALLAT (Special Rapporteur) said that the commentary to article 12 would be seriously distorted if the whole of draft article 12*bis* was included in it. He did not think it would be advisable to insert it in the introductory commentary or in the commentaries to either article 12 or article 18, both of which were also touched on in some way by the proposed new article.

84. It was his firm view that if the régime proposed by Mr. Ushakov resulted in imposing the obligations arising out of a multilateral treaty upon a newly independent State, even for a single day, it would run counter to the spirit, if not to the actual text, of article 11, which embodied the clean slate rule. He therefore proposed that a short passage on the question should be included in the last part of the introductory commentary and that the text of the proposed article 12*bis* should be reproduced as an annex at the end of the chapter.

85. The CHAIRMAN said that, if there were no further comments, he would take it that the Special Rapporteur's proposal was acceptable to the Commission.

It was so agreed.

ARTICLE 32

86. The CHAIRMAN invited Mr. Kearney to introduce his revised proposal for an article 32 on the settlement of disputes (A/CN.4/L.221), which read:

Article 32

Settlement of disputes

1. In any dispute between two or more parties regarding the interpretation or application of these articles, which is not settled through negotiation, any one of the parties to the dispute may set in motion the procedure specified in the annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

2. Nothing in the foregoing paragraph shall affect the rights or obligations of the parties, under any provisions in force binding the parties with regard to the settlement of disputes.

ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 32, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(*b*) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for

the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

87. Mr. KEARNEY said that the text he now proposed for article 32 superseded his previous proposal on the settlement of disputes (A/CN.4/L.212). His proposal embodied a conciliation system derived from the Vienna Convention on the Law of Treaties, which had been used as a moded by the Commission throughout its present proceedings.

88. There was no need to explain in detail his reasons for proposing such an article. Many of the articles which the Commission had approved were bound to give rise to disputes; those disputes would necessarily relate to the application of treaties and would be of the same character as those for which article 66 of the Vienna Convention, and the annex to that Convention, had been adopted.[19]

89. Mr. EL-ERIAN said that he appreciated the concern Mr. Kearney had shown regarding the question of the settlement of disputes; it would serve to focus attention on that question, whether the Commission decided to include a provision on it in the draft articles or not. The question would be brought to the attention of the Sixth Committee of the General Assembly and subsequently to that of the diplomatic conference which would consider the draft articles.

90. As a matter of method, however, he believed that a provision on the settlement of disputes properly belonged in the final clauses, which, traditionally, the Commission did not include in its drafts. It was true that the Commission had to some extent departed from its traditional practice in its 1966 draft on the law of treaties, article 62 of which dealt with the procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of the treaty.[20] That case, however, had been a very special one, in that article 62 had been included as part of an intricate compromise designed to satisfy certain members of the Commission who were concerned at the inclusion in the draft articles on the law of treaties of a number of provisions that could lead to the unilateral abrogation of treaty obligations, in particular draft article 50, on treaties conflicting with a peremptory norm of general international law.[21] Hence the analogy with the draft on the law of treaties did not hold good.

91. He therefore urged the Commission not to depart from its consistent practice of not including in its drafts any final clauses, such as clauses on the settlement of disputes.

92. The CHAIRMAN said that the enlarged Bureau had discussed the question of the settlement of disputes at length and a number of solutions had been proposed. One was that, subject to General Assembly approval, the Special Rapporteur should undertake a study of the problem and submit a report to the Commission at its next session. Another suggestion, made by Mr. Ago, was that a conciliation system should be adopted for the present draft, on the analogy of the Vienna Convention on the Law of Treaties.

93. Mr. ELIAS suggested that, in accordance with a view which had received fairly general support in the enlarged Bureau, the same solution should be adopted for the proposed article 32 as had been adopted for Mr. Ushakov's proposed article 12*bis*. An explanation would be given in the introductory commentary and the proposal itself would constitute a second annex to the draft. It would then be for the General Assembly to decide whether it wished the Commission itself to examine the problem or to leave it to the plenipotentiary conference, as had been done in the past for other drafts prepared by the Commission.

94. Mr. TABIBI and Mr. EL-ERIAN supported that suggestion.

95. Sir Francis VALLAT (Special Rapporteur) said he believed that because of the problems raised by many of the articles the draft was hardly viable without an article on procedure for the settlement of disputes. That being so, the conciliation system which Mr. Kearney had taken from the Vienna Convention would be a natural and logical one to adopt. He had not yet been able to complete his study of the question of the settlement of disputes in relation to the present draft articles. He would, of course, be prepared to undertake any work on that question which might be requested by the General Assembly.

96. Mr. TSURUOKA said he agreed with Mr. Kearney, but thought the Commission did not have time to study the proposed article 32. He suggested that the Commission should state in its report, for the information of the General Assembly, that it intended to study the question of the settlement of disputes.

97. Mr. USHAKOV said he thought the Commission should adopt the same procedure as for article 12*bis* and indicate in its report that it had not had time to study the proposed article 32. It was necessary to ascertain the views of the General Assembly on the subject, for without a clear-cut decision by the Assembly, the Commission would not be able to take up the question of the settlement of disputes at its next session.

98. Mr. REUTER said he agreed with the Special Rapporteur that it was desirable to include a clause on the settlement of disputes in the draft articles. He had to admit, however, that such a clause would probably not have the support of a majority of Governments, so perhaps it would be better not to include it.

99. Mr. HAMBRO said he could not agree with that approach. The Commission should prepare a draft that was as complete as possible and submit it for the consideration of Governments. A clause on the settlement of disputes should be included, even if it was ultimately rejected.

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[19] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations Publication, Sales No. E.70.V.5), pp. 298 and 301.

[20] See *Yearbook ... 1966*, vol. II, pp. 261-263.

[21] *Ibid.*, p. 247.

100. Mr. QUENTIN-BAXTER welcomed the fact that the question of a clause on the settlement of disputes had been raised. The Commission would be doing less than its duty if it failed to indicate that serious consideration needed to be given to the question of including such a clause in the draft. It was, however, clearly beyond the capacity of the Commission to deal with the matter at the present session. That fact should be reflected in its report, so as to draw the attention of the General Assembly to the matter and elicit the views of Governments on the course which the Commission should follow.

101. Mr. SETTE CÂMARA supported the suggestion made by Mr. Elias. It was desirable to cover the question of machinery for the settlement of disputes, but that machinery would clearly not be an integral part of the future convention.

102. It was necessary to respect the desire of Governments to be free to choose methods for the settlement of disputes. That point had been appreciated by Mr. Kearney; for after proposing, in document A/CN.4/L.212, arbitration machinery based on alternative B for article 12 of the Commission's 1972 draft articles on the prevention and punishment of crimes against diplomatic agents (A/8710/Rev.1, chapter III, section B), he was now proposing a totally different system, based on the conciliation procedure set out in the annex to the Vienna Convention on the Law of Treaties.

103. The procedure proposed by Mr. Elias would show Governments that the Commission had not overlooked the problem of settlement of disputes, but would not impair the flexibility which States obviously desired.

104. Mr. KEARNEY said he did not favour the course suggested by Mr. Elias, which would amount to a failure on the part of the Commission to deal with an essential problem. If no clause on the settlement of disputes was included in the draft articles, the General Assembly would certainly not ask the Commission to study the problem, but would refer the draft to a diplomatic conference without such a clause, so that no action would be taken in the matter. He therefore urged that his proposed article 32, which was based on the relevant provisions of the Vienna Convention, should be included in the draft, so that a future conference of plenipotentiaries could deal with the question.

105. He was not impressed by the argument that the settlement of disputes belonged in the final clauses of a convention; the Commission had just approved an article 6*bis* on non-retroactivity, which was also regarded as a subject for final clauses.

106. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to include in its report a paragraph stating that many members considered that a clause on the settlement of disputes should be included in the future convention on succession of States in respect of treaties. That paragraph would reflect the feeling of those members that, in view of the close affinity of the draft with the Vienna Convention on the Law of Treaties, the proposed conciliation system should be given serious consideration.

It was so agreed.

Organization of future work

[Item 9 of the agenda]

107. The CHAIRMAN drew attention to the recommendation by the General Assembly in paragraph 3(*c*) of its resolution 3071 (XXVIII) that the Commission should undertake at an appropriate time a separate study of the topic of international liability for injurious consequences arising out of the performance of activities other than internationally wrongful acts. The enlarged Bureau had examined the matter and recommended that the Commission should decide to include that topic in its general programme of work. If there were no comments, he would take it that the Commission agreed to adopt that recommendation.

It was so agreed.

108. The CHAIRMAN reminded the Commission that it had agreed to give priority at its next session to the topic of State responsibility, which would take up four weeks. Bearing in mind that one week was required for consideration of the Commission's report on the session, that would leave only five weeks for the remaining topics. Those topics included succession of States in respect of matters other than treaties, for which the Special Rapporteur had strongly urged absolute priority, the question of treaties concluded between States and international organizations or between two or more international organizations, and the most-favoured-nation clause. Five weeks would obviously not be sufficient to deal with all those topics and the situation would be even more difficult if the General Assembly requested the Commission to study the problem of a clause on the settlement of disputes for inclusion in the draft articles on succession of States in respect of treaties.

109. The enlarged Bureau had not taken any decision on the allocation of time to the various topics at the next session, but it had unanimously agreed that ten weeks would not be sufficient to deal with all the work in hand. It had therefore agreed to recommend that the Commission should include a paragraph on the duration of forthcoming sessions in its report. The paragraph would state that, in order to carry out its programme satisfactorily, the Commission considered it necessary to request that the practice of holding a twelve-week session, which had been introduced in 1974, should be continued for the next and subsequent sessions.

110. If there were no comments, he would take it that the Commission agreed to adopt that recommendation.

It was so agreed.

The meeting rose at 6 p.m.

1297th MEETING

Monday, 22 July 1974, at 3.15 p.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney,