Document:-
A/CN.4/SR.1503

Summary record of the 1503rd meeting

Topic:
Succession of States in respect of matters other than treaties

Extract from the Yearbook of the International Law Commission:-
1978, vol. I

36. Mr. Castañeda had rightly said that any agreement between the seceding State and the predecessor State would have to be consonant with international public order; it could therefore be affirmed that such an agreement must respect equity. In that connexion it should be emphasized that, as Mr. Castañeda had pointed out, article 24 did not involve a rule of *jus cogens*; equity was a general principle of law but, unlike the principle of the sovereignty of States over their natural wealth, did not partake of *jus cogens*. The Drafting Committee might seek a formula that would indicate how the agreement between the predecessor State and the successor State should be designed in order to conform to the principle of equity. In that connexion, it should be noted that in practice an equitable agreement benefited not only the part of the territory that seceded but also the predecessor State.

37. Mr. Tabibi, citing the example of Katanga, had mentioned the possibility of a separation of a particularly wealthy part of a State's territory that would leave the predecessor State so impoverished that it would no longer be viable; undoubtedly, the only way for the Commission to deal with such situations would be to provide in general terms that equity must be determined in the light of all the surrounding circumstances. Mr. Sucharitkul had mentioned the opposite case, in which the seceding party's capacity to pay was doubtful, and had expressed the hope that the principle of equity would be applied with sound judgement, which was not always easy. In his own view, it would be necessary in either case to adhere faithfully to the principle of equity.

38. Mr. Ushakov had first emphasized the difficulties that might arise with the definition of the term "State debt" in article 18. The definition did not seem entirely satisfactory, but the Commission should disregard that for the moment. In drawing a distinction between a State's debt under international law and its debt towards its nationals, Mr. Ushakov had reopened the Commission's discussion of the year before. The question was a very delicate one and would have to be dealt with in the commentary to article 24.

39. On the other hand, the words "in relation to that State debt" at the end of paragraph 1 of the article clearly showed that the provision covered localized debts, a point to which Mr. Ushakov had rightly drawn attention. If the proceeds of a loan had been assigned by a State to a part of its territory that later seceded, it was obvious that, in keeping with the principle of equity, the burden of that debt should lie chiefly with the successor State. As the International Court of Justice had indicated in its decision in the *North Sea Continental Shelf Cases*, all the surrounding circumstances must be taken into account in the application of principles of equity.[9]

40. Mr. Ushakov had also posed the question of the position of the creditor third State in the light of article 20. It was to be emphasized that article 20 formed part of the general provisions applicable to succession to State debts and was therefore applicable, in theory, to all types of succession governed by specific provisions. In cases of secession, therefore, the creditor had no choice if the debt was shared equitably, a state of affairs that the creditor could not fail to welcome but that none the less raised certain problems that would have to be dealt with in the commentary.

41. As to the comments made by Mr. Pinto in connexion with the phrase "property, rights and interests", as close a parallel as possible had been established between article 24 and the corresponding provision relating to State property, namely, article 15. In article 15, however, the Commission had not used the formulation "property, rights and interests" but had spoken of "State property". According to the definition given in article 5, State property meant the assets of the predecessor State, i.e. the rights, property and interests owned by it at the time of the succession. Perhaps the Commission should review that question of terminology at the next session. Equity obviously required that account be taken of any obligations, over and above the purely financial obligations of debts, that might be assumed by the successor State when the assets and liabilities were apportioned. For the moment, however, it would be best to retain the formula already employed in the draft. In any event, it would not be possible to draw on article 14, as suggested by Mr. Tsuruoka, or even on article 15, which in respect of State property was the equivalent of the article now under consideration, since neither contained the phrase "property, rights and interests".

42. Lastly, Mr. Riphagen had suggested a review of the formulae for determining the "equitable proportion" that appeared in articles 24 and 25, the latter speaking of the "tax-paying capacity" of the successor State. The Drafting Committee might usefully endeavour to reconcile the wording of those two articles.

43. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to refer article 24 to the Drafting Committee or consideraion in the light of the discussion.

It was so agreed.[10]

The meeting rose at 12.40 p.m.

[9] *I.C.J. Reports 1969*, p. 3.

[10] For consideration of the text proposed by the Drafting Committee, see 1515th meeting, paras. 55-63.

1503rd MEETING

Monday, 19 June 1978, at 3.10 p.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Bedjaoui, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. El-Erian, Mr. Francis,

Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Succession of States in respect of matters other than treaties (*continued*) (A/CN.4/301 and Add.1,[1] A/CN.4/313)

[Item 3 of the agenda]

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

ARTICLE 25 (Dissolution of a State)

1. The CHAIRMAN invited the Special Rapporteur to introduce article 25 (A/CN.4/313, para. 77), which read:

Article 25. Dissolution of a State

Where a State is dissolved and disappears and the parts of its territory form two or more States, the apportionment of the State debts of the predecessor State shall be settled by agreement between the successor States.

In the absence of agreement, responsibility for the State debts of the predecessor State shall be assumed by each successor State in an equitable proportion, taking into account such factors as its tax-paying capacity and the property, rights and interests passing to it in connexion with the said State debts.

2. Mr. BEDJAOUI (Special Rapporteur) reminded members that the Commission had drawn a clear distinction between the separation of a part or parts of the territory of a State, where the predecessor State survived, and the dissolution of a State, where the State disappeared through dismemberment. Those two cases, which were dealt with in articles 24 (*ibid.*, para. 26) and 25 respectively, were clear in theory, but in practice it was sometimes difficult to distinguish one from the other, as several representatives had pointed out in the Sixth Committee, and to determine whether a given case fell under article 24 or article 25. Moreover, even when a situation seemed to be clear, it was not unusual for a State to challenge the description given to it. For example, after the dismemberment of the Ottoman Empire following the First World War, Turkey had regarded itself as one of the successor States, not as the predecessor State. It was particularly important to identify each situation exactly, since the solutions applicable to the passing of State debts and State property varied according to whether the case was one of separation or dissolution.

3. State practice in the matter was fairly abundant, as was clear from the numerous examples he had examined in paragraphs 29 to 61 of his tenth report (A/CN.4/313). If he had confined himself to mentioning the disappearance of the Austro-Hungarian Empire in 1919, that was because it was an extremely complicated case. In general, the dissolution of a State was the reverse of the process of uniting of States, and, as the Commission had already noted in its commentary to the draft articles on succession of States in respect of treaties, dissolutions of unions of States were far more frequent than dissolutions of unitary States[2] Nevertheless, the dissolution of a State that had not come into being as a result of uniting was quite conceivable.

4. The case of the dissolution of Great Colombia, in the period 1829 to 1831, had been characterized by the existence of an agreement between the entities forming the union, by an equitable apportionment of debts between them and by two arbitral awards rendered in 1869. Those awards had been based on the principle of equitable apportionment of debts, taking account of the resources or capacity to pay of the successor State, namely, Venezuela.

5. The settlement after the break-up of the Netherlands had taken from 1830 to 1839 and had produced a spate of proposed agreements. The five Powers of the Holy Alliance had engaged in long and arduous negotiations, from which some lessions could be learnt. It could be noted, first, that there had been an agreement—even several agreements; also that one of the proposed agreements, the Twelfth Protocol, referred to the existence of principles which, "far from being new, were principles that had always governed the reciprocal relations of States".[3] Furthermore, the five Powers had reached the conclusion that "upon the terminaton of the union, the community in question likewise should probably come to an end and, as a further corollary of the principle, the debts which, under the system of the union, had been merged, might, under the system of separation, be redivided".[4] Thus dissolution had been seen as the opposite of the process of uniting. Lastly, all the official discussions, as well as the objections to and support for the solutions proposed, had been based on the concept of equity and justice. There had been frequent references to the apportionment of debts on "equitable bases" and "in fair proportion". Yet the claims of "Realpolitik" had not been overlooked, and Belgium had made its agreement conditional on the acquisition of the Grand Duchy of Luxembourg. Finally, a treaty based on equity had been concluded in 1839 and guaranteed by the five Powers of the Holy Alliance.

6. Among the other cases examined, the dissolution, in 1905, of the union between Norway and Sweden was a very special case, in that it had been a personal union formed by two States that had retained their individuality. There had been no need to apportion the debts, since each State had remained responsible for its own debts. Only common debts contracted in respect of diplomatic representation had

---

[1] *Yearbook... 1977*, vol. II (Part One), p. 45.

[2] See *Yearbook... 1974*, vol. II (Part One), p. 260, doc. A/9610/Rev.1, chap. II, sect. D, articles 33 and 34, para. (2) of the commentary.

[3] See A/CN.4/313, para. 38.

[4] *Ibid.*, para. 39.

been apportioned. The break-up of the union between Denmark and Iceland, in 1944, was also a special case, inasmuch as the financial separation of the two countries had begun in 1871; the final political separation in 1944 had had no financial consequences. As to the dissolution of the United Arab Republic in 1960, his research had not provided sufficient information to enable him to determine what solutions had been applied to the problem of succession to the Union's debts. The same applied to the dissolution of the Federation of Mali in 1960; it was difficult to form an opinion as to the nature, origin and amount of Mali's debts to Senegal, mentioned in a communiqué of 1964. The dissolution of the Rhodesia-Nyasaland Federation in 1963 had led to an apportionment of debts by the administering authority, but that apportionment had been challenged both as to its principle and as to its procedure.

7. An examination of State practice brought up two questions. The first was the nature of the problems raised by the passing of State debts upon the dissolution of a State. The break-up of a State involved that interests were often difficult to reconcile otherwise than by agreement. Thus an agreement seemed indispensable, although it was extremely difficult to reach in the case of a "divorce"; to make it easier, the principles that must be reflected in every agreement should therefore be indicated. It seemed that the principle of equity should govern the apportionment of debts between successor States, due account being taken of all the circumstances of the case. That point emerged, in particular, from the various protocols relating to the separation of Belgium and Holland, which were referred to in paragraphs 65 and 66 of his tenth report (A/CN.4/313). The second question concerned the classification of certain cases of succession, for example, the succession to the Ottoman Empire. In the draft articles on succession of States in respect of treaties, the Commission had at first made a clear distinction between the separation of parts of a State and the dissolution of a State; but, as a result of comments made in the Sixth Committee, it had dealt with both cases in a single article, although it had also devoted a separate article to the case of separation. For succession of States in matters other than treaties, he had retained the distinction between separation and dissolution, taking the survival or disappearance of the predecessor State as the criterion. That criterion was not entirely reliable, however, because knotty problems could arise in regard to the continuity and identity of the predecessor State. On that point, he referred members of the Commission to the comments he had made in paragraphs 70 and 71 of his report, concerning the disappearance of the Kingdom of the Netherlands.

8. The solutions he had proposed were based on the old doctrine, represented in particular by Fauchille and Bluntschli, according to which State debts were apportioned in an equitable proportion between the successor States. Since, in principle, the predecessor State disappeared, creditors were entitled to know what became of their claims. That was why he had given pride of place to agreement in the proposed rule; only in the absence of agreement should the principle of equity be applied. As in the case of separation of parts of a State, equity required that all the circumstances of the case be taken into account, in particular the "property, rights and interests" passing to the successor State, to which he had added, in the case of the dissolution of a State, the criterion of capacity to pay, bearing in mind the two arbitral awards rendered in 1869 following the dissolution of Great Colombia. That concept was not confined to the tax revenue of the provinces that had become successor States as a result of the dismemberment of the predecessor State; it had a much wider meaning and also included each successor State's capacity to pay.

9. Mr. TABIBI said that the case of the Belgian-Dutch union of 1814, unlike some of the other cases to which the Special Rapporteur had referred in his tenth report, provided clear guidance as to both uniting and separation, and thus provided a sound basis on which to draft a rule.

10. He could therefore accept article 25 in principle, but thought that the word "disappears" was not appropriate in the context, for it did not take account of the fact that the territory and people of the State—if not the State itself—subsisted. Moreover, a union of States that had been dissolved might well form another union at some later date. In the Arab world, for instance, there was a movement towards the formation of a single nation and although the United Arab Republic had been dissolved, a new union of Arab nations might come into being. He therefore suggested that the word "disappears" should be replaced by the words "breaks up", which would convey the same idea without giving the impression that nothing survived of the predecessor State.

11. Sir FRANCIS VALLAT supported article 25 in principle, but thought that three points regarding its background and scope of application should be reflected in the commentary.

12. The first point concerned the problem of classifying cases of succession of States. He noted that, in the Special Rapporteur's last reports, the case of India and Pakistan had been placed under the heading of newly independent States (A/CN.4/301 and Add.1) and that of the Federation of Rhodesia and Nyasaland under the heading of dissolution of a State (A/CN.4/313). His own inclination would have been to regard India as having been a State in 1947, subject to certain qualifications. After all, India had belonged to the League of Nations and had been an original Member of the United Nations, and in many respects had had all the international and diplomatic status of a State. In his view, the case was rather one of dissolution of a State than of the birth of a newly independent State in the sense in which that expression was now understood. The Federation of Rhodesia and Nyasaland, on the other hand, had gradually been given *ad hoc* treaty-making powers and, as a matter of practice, had developed a treaty-making ca-

pacity. But it had still fallen far short of independence, and the situation resulting from its dissolution was closer, he would have thought, to the birth of a newly independent State. Those two cases illustrated the difficulty of making a precise classification.

13. The case of Germany involved special considerations, because the formation of the German Democratic Republic from a large part of the territory of the former German State might be regarded either as the separation of part of a State or as the dissolution of an old State and the creation of two new ones. The debt problem, however, had been largely resolved by the agreement concluded in London 1953,[5] under which the Federal Republic of Germany had assumed responsibility for many of the debts of the former German Reich.

14. That example illustrated his second point: the relevance of political factors to questions of debt division and debt settlement. Those factors had played a significant part in the London Agreement, one of the aims of which had been to establish the Federal Republic of Germany on a viable basis, and, he believed, in other cases too, such as that of Belgium and Holland. He raised the point because equity was a very mobile quantity: a political factor, in the loose sense, for one State might be regarded as a matter of equity by another. It was therefore necessary to recognize in the commentary that political factors that were not an obvious part of the equity of the situation—for instance, those not directly related to the benefit of the debt or to the paying capacity or natural resources of the State in question—must inevitably play a part in debt settlement in cases of dissolution. Their relevance to the equities of the situation must be assessed, since they might be just as important as other factors, if not more so, for one or other of the new States.

15. His third and last point was the need to protect the interests of creditors. It was essential that, when a State was dissolved, the creditors should not suffer, and to that extent there was an equity that concerned creditors as well as the newly established State. It was enough to think of only one aspect of the matter—currency and exchange rates—to see how easily the interests of creditors could be prejudiced in such cases. It should therefore be made quite clear that nothing in the provisions governing the settlement of outstanding debts between new States was intended to prejudice those interests, whether they were State or private interests.

16. Mr. DADZIE noted that the Special Rapporteur had cited a number of examples of dissolution of States that were of both historical and practical significance. In particular, his extensive treatment of the Belgian-Dutch union and of the part played in the negotiations by the Great Powers provided ample evidence of the complexity of the issues involved in the passing of State debts. The fact that the matter had finally been settled by the parties themselves under the Belgian-Dutch Treaty signed in London in 1839 (A/CN.4/313, para. 34) was an impressive example of State practice and one deserving of recognition in the progressive development of that branch of international law. The case of the Belgian-Dutch union likewise drew attention to the principles that should be adopted by the parties concerned in any "break-up"—a term he was inclined to agree was the most appropriate in that context, although he could also accept the word "dissolution". Those principles included the concept of equity to which the Forty-Eighth Protocol, of 6 October 1831, had referred as the guiding principle in the apportionment of debts between the two successor States. Reference had also been made to the importance of the element of justice and to the size and capacity to pay of the successor States (*ibid.*, paras. 65-67).

17. From the examples given by the Special Rapporteur, it seemed that the break-up of unions of European States—such as those between Norway and Sweden and between Denmark and Iceland—had given rise to no problems and that the passing of State debts had taken place harmoniously. The dissolution of unions between African States also seemed to have been a relatively simple matter, involving no more than a return to the *status quo ante* and thus obviating the need to provide for succession to State debts. That had been true of the short-lived union of Ghana, Guinea and Mali (1960), and of the United Arab Republic (1958). Little was known of the outcome in the case of the Federation of Mali, established in 1959 and dissolved in 1960, except that the Joint Senegalese-Malian Commission had issued a communiqué announcing that Mali would gradually pay its debts to Senegal. None of the unions of African States had survived, possibly because, owing to their long history of colonization, those States lacked the necessary stability to sustain such unions. The Federation of Rhodesia and Nyasaland had been both formed and dissolved by the metropolitan Power, which had also settled the apportionment of the federal debt. The settlement had been challenged, however, on the ground that, as the metropolitan Power had dissolved the Federation, it should assume responsibility for the debt.

18. With regard to the text of article 25, he had no difficulty in accepting the idea that, on its dissolution, a State disappeared as a unified entity. He also agreed that the apportionment of the State debts of the predecessor State should be the subject of agreement between the successor States. There was ample support for that approach in the case of the break-up of the Belgian-Dutch union when, after the expenditure of much effort, it had finally been the two States concerned that had arrived at an acceptable arrangement. The article also took account of the importance of equitable considerations, particularly in the absence of agreement between the parties, and of such factors as the capacity of the successor States to pay, and the property, rights and interests passing to

[5] Agreement relating to indebtedness of Germany for awards made by the Mixed Claims Commission, United States and Germany, signed in London on 27 February 1953.

them from the dismembered State. The rule would thus make a significant contribution to the progressive development of international law, and he recommended that article 25 should be referred to the Drafting Committee.

19. Mr. USHAKOV agreed with the substance of article 25, but wished to make some general comments first on the draft articles as a whole, and then on the wording of the article under discussion.

20. The Commission's task was to lay down in its draft articles general rules that would serve as directives for States in particular cases. They should be general rules, not only because they would be rules of general international law, but also because they must be capable of application in different specific situations. The problem, therefore, was to state general rules applicable to situations described in general terms.

21. In the first part of its draft, devoted to State property, the Commission had distinguished between the separation of a part or parts of the territory of a State, which was the subject of article 15,[6] and the dissolution of a State, which was the subject of article 16. In the Commission's own words, separation occurred "when a part or parts of the territory of a State separate from that State and form a State", and dissolution "when a predecessor State dissolves and disappears and the parts of its territory form two or more States". In his view, those general descriptions, which were reproduced in the corresponding articles on State debts, namely, articles 24 and 25, did not provide a basis for making any clear distinction between the two situations. In the case of separation, it might be asked what was the fate of the predecessor State. If large areas of its territory separated from it, it was manifestly no longer the same State as before and, in a way, become a new State. In the case of dissolution, the notion of "disappearance" was open to question. It sometimes seemed very difficult to apply the criterion of the survival or disappearance of the predecessor State in order to distinguish between the case provided for in article 24 and that provided for in article 25. For example, if a great part of the territory of the Soviet Union separated from it, or if 15 of the 23 federated states of Brazil broke away from that country, would that be separation or dissolution? Since it was very difficult to distinguish between those two types of State succession and to define them precisely, he thought the rules stated in articles 24 and 25 should be almost identical, so that they could be equally well applied in either case; for it was to be feared that choosing between articles 24 and 25 might pose a problem in practice.

22. With regard to the wording of article 25, he wondered why the Special Rapporteur had not reproduced in that article the introductory clause of article 16, just as he had reproduced in article 24 the introductory clause of article 15. He believed it would be better to follow the same course in article 25 as in articles 15, 16 and 24, and say that, unless the predecessor State and the successor State agreed otherwise, the debt of the predecessor State would pass to the successor State in an equitable proportion. There was no need to mention the capacity of the successor State to pay, since that notion was already included in the concept of equitable proportion, which covered all the other conditions. The notion of capacity to pay should be mentioned either in all the articles or in none of them.

23. Mr. PINTO agreed with the content of article 25. With regard to the economy of the draft articles, however, it was clear that four basic principles were involved in each of the types of succession of States dealt with in articles 21 to 25 and in article W.[7] First, agreement should be reached between the States involved in a case of State succession. Secondly, the principle of equity must apply to the passing of debts to the successor State, although it should be noted that, for reasons that were not clear, the matter was sometimes viewed from the opposite angle, namely, that of the assumption, rather than the passing, of debts or obligations. The third principle related to the criteria to be adopted for the apportionment of State debts, the most common being that of the "property, rights and interests" connected with the debts. Lastly, it was necessary to protect the interests of creditors, and that principle should be reflected in the entire philosphy of the draft. It might be advisable for the Special Rapporteur or the Drafting Committee to consider whether it was necessary to distinguish between the various types of State succession and, with a view to more systematic presentation, to state in more economical fashion the four principles he had mentioned.

24. In addition, the term "tax-paying capacity" was rather difficult to understand in the context of article 25, for it might mean tax-levying capacity or the capacity to contribute to the formation of assets. If it were decided to retain the reference to that factor in article 25, it would require further explanation, and the Commisson would also have to decide whether it should be included in other articles relating to different types of succession of States.

25. Mr. JAGOTA agreed with Sir Francis Vallat that the question of succession to State debts should be examined from the point of view of classification and that political factors should be taken into consideration. It was also important to protect the interests of creditors, in particular by ensuring effective methods of payment of the debts.

26. He could not, however, agree with the view that the case of India and Pakistan was one of the dissolution of a State. At the time India had formed part of the British Empire, treaties concluded by the United Kingdom had applied *ipso facto* to India. From about 1930 onwards, however, when concluding treaties, the United Kingdom had made a separate declaration that it was also signing the treaty on behalf

[6] See 1500th meeting, foot-note 8.

[7] *Ibid.*, para. 21.

of India, which had been a member of the League of Nations. Moreover, in 1945 a separate delegation had represented India at the San Francisco Conference at which the Charter of the United Nations had been drafted. Thus although it could be affirmed that at that time the Dominion of India had had separate international legal personality, its dominion status had been materially different from that of Canada, for example. In the negotiation of treaties entailing obligations for India, the spokesman for India had in almost every instance been a British national. Not until September 1946, when an interim Government had been established, had an Indian national become the minister responsible for India's external affairs. Consequently, although India had in some sense acquired treaty-making capacity, such capacity had not been that of a truly independent State. Until India's accession to independence, ultimate responsibility for its international relations had remained with the United Kingdom. In 1947, therefore, India would have come under the definition of a newly independent State contained in article 3 (*f*) of the draft, although it must be remembered that that definition reflected a concept that had emerged only after 1955, largely as a result of the practice of African States.

27. Between the announcement of independence for India and the date of the transfer of power under the Indian Independence Act passed by the United Kingdom Parliament in July 1947, the Governor-General, with the assistance of representatives of India and of what was later to become Pakistan, had issued numerous Orders-in-Council specifying the obligations to be assumed by India and by Pakistan in such matters as treaty obligations, property, debts and other financial matters. No mention had been made, however, of the relations between the United Kingdom and India itself, and no separate devolution agreement had been concluded between the two countries, for the United Kingdom had maintained that India, upon accession to independence, would undergo a qualitative and quantitative change in its international legal personality, but that that personality could not be regarded as being newly acquired. The question had therefore arisen whether the State of India had been dissolved or whether Pakistan could be considered as territory that had separated from India. The United Nations Counsel had expressed the opinion that India continued to have international legal personality and, unlike Pakistan—a State that had come into being as a result of the separation of territory from India—it did not have to reapply for membership of the United Nations. Hence the case of India and Pakistan had not been a case of dissolution in 1947. India had respected that position until about 1968, despite the emergence of what might be termed the "clean-slate" concept of a newly independent State.

28. There had, however, been cases in which the parties to treaties concluded by the United Kingdom on behalf of India had claimed that, in view of the political changes that had occurred, the treaties were no longer in force and would have to be renegotiated with India, which must be treated as a newly independent State. Such cases had occurred even though India had still considered itself a party to the treaties. India had not yet come to a firm conclusion on the matter, but it was clear that, on balance, although in practice they had observed treaty obligations incurred prior to 1947, India and Pakistan should be described as newly independent States rather than as successor States resulting from the dissolution of a State.

29. With regard to article 25, it was indeed difficult at times to differentiate between cases of separation of a part of the territory of a State and cases of dissolution of a State. Nevertheless, that was still a sound distinction and, although it gave rise to difficulties of interpretation, it should be maintained.

30. The two paragraphs of the article should be numbered and the wording of the second paragraph should be brought into line with that of paragraph 1 of article 24, which used the words "taking into account, *inter alia*", rather than the words "taking into account such factors". In addition, it might be advisable to determine whether paragraph 1 of article 24 included, by implication, the factor of the successor State's "tax-paying capacity", referred to in article 25. He shared Mr. Ushakov's view that the first paragraph of article 25 should be harmonized with the introductory paragraph of article 16; the positive formulation of article 25 imposed an obligation on the States concerned, and account should be taken of the fact that agreement was sometimes extremely difficult, if not impossible, in the case of the dissolution of a State, which was a painful affair. The use of the word "disappears" caused him no difficulties; nor, for that matter, did the use of the word "dissolution", although he would not object to its being replaced by the term "break-up". Lastly some members appeared to see a link between article 25 and article W. But since any form of State could be dissolved, and not only a union of States, it was desirable to retain the formula used at the beginning of article 25, which referred simply to "a State".

The meeting rose at 6 p.m.

1504th MEETING

Tuesday, 20 June 1978, at 10.05 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Castañeda, Mr. Dadzie, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.