

Document:-
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Summary record of the 1355th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1975, vol. I

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Paragraph 39

67. Mr. BILGE suggested that, in the second sentence, the words "in the sphere of international trade" be replaced by the words "in the sphere of economic relations", in conformity with the Commission's decision on paragraph 27.

It was so agreed.

Paragraph 39, as amended, was approved.

68. Mr. USTOR (Special Rapporteur) said that he would shortly be circulating the text of three paragraphs to be added to the introduction to chapter IV of the report.² Those paragraphs would deal respectively with the relationship between the draft articles on the most-favoured-nation clause and the Vienna Convention on the Law of Treaties, and the residual and the general character of the rules contained in the draft articles.

B. DRAFT ARTICLES ON THE MOST-FAVOURLED-NATION CLAUSE

Commentary to articles 6 [8]

(Unconditionality of most-favoured-nation clauses), 6 bis [9] (Effect of an unconditional most-favoured-nation clause) and 6 ter [10] (Effect of a most-favoured-nation clause conditional on material reciprocity) (A/CN.4/L.235/Add.2)

69. The CHAIRMAN invited the Commission to examine the commentary to articles 6 [8], 6 bis [9] and 6 ter [10] paragraph by paragraph.

Paragraphs (1)-(10)

Paragraphs (1)-(10) were approved.

Paragraph (11)

70. Mr. KEARNEY proposed that the phrase "for the purposes of international commerce" be added to the end of the second sentence of the paragraph, since conditional most-favoured-nation clauses still existed in consular treaties.

71. Mr. USTOR (Special Rapporteur) said that the most-favoured-nation clauses found in consular treaties were conditional on material reciprocity and were thus not of the type referred to in paragraph (11). He suggested that, in order to clarify the paragraph in the way desired by Mr. Kearney, the first sentence be amended to read "Because of the general abandonment of this conditional form of the clause, it is now . . .".

It was so agreed.

Paragraph (11) was approved with that amendment.

Paragraphs (12)-(14)

Paragraphs (12)-(14) were approved.

Paragraph (15)

72. Mr. KEARNEY proposed that the effect of the Hull interpretation be made clear by the addition at the end of the paragraph of a sentence reading "The consequence of this change in interpretation was to produce a system in which conditional treatment was merged to a certain extent with unconditional treatment."

73. Mr. USTOR (Special Rapporteur) said that he would like time to consider that proposal.

Paragraph (15) was approved, subject to the decision of the Special Rapporteur, concerning the proposal by Mr. Kearney.

Paragraphs (16)-(22)

Paragraphs (16)-(22) were approved.

Paragraph (23)

74. Mr. KEARNEY suggested that the word "completely" be deleted from the second sentence of the paragraph.

It was so agreed.

Paragraph (23), as amended, was approved.

Paragraphs (24)-(31)

Paragraphs (24)-(31) were approved.

Paragraph (32)

75. Mr. KEARNEY suggested that the mention of his name should be replaced by the expression "one member", in accordance with the practice of the Commission.

It was so agreed.

Paragraph (32), as amended, was approved.

Paragraphs (33)-(43)

Paragraphs (33)-(43) were approved.

The commentary to articles 6 [8], 6 bis [9] and 6 ter [10] was approved.

The meeting rose at 1 p.m.

1355th MEETING

Wednesday, 23 July 1975, at 10.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Castañeda, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Draft report of the Commission on the work of its twenty-seventh session

(A/CN.4/L.232 and Add.5 and 6; A/CN.4/L.233 and Add.1-3)

(continued)

Chapter III

SUCCESSION OF STATES IN RESPECT OF MATTERS OTHER THAN TREATIES

A. INTRODUCTION

1. The CHAIRMAN invited the Commission to consider section A of chapter III of its draft report (A/CN.4/L.233/Add.2).

² See 1356th meeting, para. 1.

2. Mr. BEDJAOUI (Special Rapporteur) said that the portion of the draft report contained in document A/CN.4/L.233/Add.2 was, in substance, a reproduction of the Commission's 1973 report¹ and could therefore be approved as a whole.

3. There were, however, a number of changes in paragraph 22 to which he wished to draw the Commission's attention. Acceptance of that paragraph would mean that, at the request of the Special Rapporteur, the Commission would have to forgo consideration of certain questions in order to devote itself to the study of others, so as to be able to complete the draft articles on the succession of States in respect of matters other than treaties within a reasonable period of time, in accordance with General Assembly resolution 3315 (XXIX), which recommended that the Commission should proceed with the preparation of the draft on a priority basis. After having limited its study to public property and, more particularly to State property, the Commission would have to take up the question of public debts and, more especially, of State debts. Consequently, while reserving the possibility of considering other problems relating to public property and debts, the Commission would, in future, confine its study to State property and debts. It would then have studied three important questions: treaties, State property and State debts.

4. He also drew the Commission's attention to the third sentence of paragraph 14 concerning the question of rights in respect of the authority to grant concessions. That question was dealt with in draft article 10, which the Commission had provisionally set aside. The few lines relating to rights in respect of the authority to grant concessions which now appeared in paragraph 14 had been included to take account of the concern expressed by certain members of the Commission, particularly Mr. Pinto.

5. Mr. KEARNEY said he wondered whether it might not be better to postpone a decision on paragraph 22 until study of the report of the Planning Committee had been completed. It was not so much that there was any substantial difference between the schedule for study of the topic proposed by the Planning Committee and that outlined by the Special Rapporteur in paragraph 22, but rather that the Planning Committee had suggested that the question of public property should be studied before that of public debts.

6. Mr. BEDJAOUI (Special Rapporteur) said that there was no question in paragraph 22 of tying the Commission's hands in respect of its future work. It was simply a matter of an "intention" of the Special Rapporteur. It was for the Commission to "decide later in what order the other questions concerning public property, and the other matters included in the topic" were to be considered. Personally, he could not see any contradiction between the intention announced by the Special Rapporteur in paragraph 22 and the proposal of the Planning Committee. Accordingly, he could see no difficulty in approving paragraph 22.

Section A of chapter III was approved.

¹ Yearbook . . . 1973, vol. II, pp. 198-209, document A/9010/Rev.1, paras. 50-92.

B. DRAFT ARTICLES ON SUCCESSION OF STATES IN RESPECT OF MATTERS OTHER THAN TREATIES

Commentary to article 9

(General principle of the passing of State property)
(A/CN.4/L.233)

7. The CHAIRMAN invited the Commission to consider the commentary to article 9 paragraph by paragraph.

Paragraphs (1)-(4)

Paragraphs (1)-(4) were approved.

Paragraph (5)

8. Sir Francis VALLAT suggested that the words "and also", which made it appear that article 9 was more rigid than was intended, be deleted from the second sentence of the paragraph.

9. Mr. BEDJAOUI (Special Rapporteur) said that the phrase "and also applies" was less rigid than it seemed, for, as he had explained in paragraphs (2) and (3) of his commentary, the rule stated in article 9 was accompanied by two saving clauses: "subject to the provisions of the articles of the present Part" and "unless otherwise agreed or decided".

Paragraph (5) was approved.

Paragraphs (6)-(10)

Paragraphs (6)-(10) were approved.

The commentary to article 9 was approved.

Commentary to article [11]

[Passing of debts owed to the State]

(A/CN.4/L.233/Add.1)

10. The CHAIRMAN invited the Commission to consider the commentary to article [11] paragraph by paragraph.

11. Mr. BEDJAOUI (Special Rapporteur) said that the whole of article 11 had been placed within square brackets, so that it did not commit the Commission. Some members had contended that certain State claims did not automatically pass to the successor State. He had shown, however, that State claims passed to the successor State when they arose from the activity or the sovereignty of the predecessor State in the territory. It was the link between the claim and the territory which justified the passing of the claim to the successor State and avoided the passing to the successor State of claims which had no connexion with the territory.

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

12. Mr. KEARNEY, referring to the last sentence of the paragraph, said that the exact meaning of the phrase "true sovereignty", or of its presumed corollary, "false" sovereignty, was not clear to him. Moreover, the sentence suggested that General Assembly resolutions were, as a matter of course, capable of transforming "true sovereignty" into something else, whereas that was only exceptionally so, as in the Namibia case.

13. Mr. BEDJAOUI (Special Rapporteur) suggested that the word "true" be deleted.

14. Mr. AGO suggested that the phrase in question be amended to read "did not have sovereignty", in order to avoid giving the impression that the predecessor State had had but had not exercised sovereignty over the territory.

15. Mr. USHAKOV proposed that the second half of the final sentence, following the words "in particular", be replaced by the words "in dependent territory situations".

16. Sir Francis VALLAT said that he wished to make it perfectly clear that he did not accept the inevitable implication of Mr. Ushakov's proposal that every territory to which the label "dependent" could be attached was necessarily not under the sovereignty of the parent State. Such a conclusion would be very dangerous for the Commission and should be avoided. That there were dependent territories over which the parent State did not have sovereignty was generally accepted, but it was not accepted as a complete and absolute proposition that a parent State could not have sovereignty over a dependent territory.

17. Mr. BEDJAOUI (Special Rapporteur) proposed that, as a compromise, the last sentence of paragraph (3) be amended to read: "Obviously, only the second condition can apply in any case in which the predecessor State did not have sovereignty over the territory to which the succession of States relates and in particular in certain situations concerning dependent territories".

Paragraph (3) was approved with that amendment.

Paragraph (4)

18. Mr. KEARNEY suggested that the paragraph should make clear at what date the registration taxes in question had become due. He assumed that the taxes had been owed to Savoy.

19. Mr. BEDJAOUI (Special Rapporteur) said it seemed hardly necessary to state the date when the registration taxes had become due, since it was clear that it must have been prior to the date on which the succession of States had occurred. He suggested that the words "to the predecessor State" be inserted after the word "owed" in the second sentence.

It was so agreed.

20. Mr. CASTAÑEDA said he wondered whether a distinction should not be made between ordinary claims which passed to the successor State, and certain duties, dues or taxes payable for services provided by the predecessor State, the passing of which to the successor State was not justified.

21. Mr. BEDJAOUI (Special Rapporteur) said that article 11 was based precisely on that understanding. The article did not relate to every kind of claim, since the debts owed to the predecessor State did not pass to the successor State in their entirety. The only claims which did pass were those which were linked with the territory, by reason either of the activity or of the sovereignty of the predecessor State in the territory.

22. Mr. AGO, referring to the case mentioned in paragraph (4), said it was true, as the *Cour de Cassation* had held, that the petitioner was not released from certain debts which he owed to the tax authorities of the predecessor State under the laws of the predecessor State. It should be made clear, however, who was the creditor from whose claim he was not released.

23. Mr. BEDJAOUI (Special Rapporteur) said that, in the case mentioned in paragraph (4), the French Government had argued that the disappearance of Sardinian sovereignty from Savoy did not mean the disappearance of Sardinian law relating to registration taxes and that the petitioner was liable to the French Treasury for those taxes.

24. Mr. AGO said that he did not agree with the Special Rapporteur's conclusion. It was true that, under the French Empire, Savoy had continued to be subject to certain laws inherited from the Kingdom of Sardinia and that those laws, which from then on had become French laws, had continued to be applied. But that did not justify the conclusion that, if a private individual had omitted to pay to the Kingdom of Sardinia, before the succession of States, a tax relating to a period prior to the succession, that tax was transferable to the successor State. The question was whether a debt contracted by a private individual, before the succession of States, in respect of services provided to him by the Sardinian State, automatically became a debt owed to the French Empire. That was a question which had nothing to do with continuity of laws.

25. Mr. BEDJAOUI (Special Rapporteur) said that, in the case mentioned in paragraph (4), the debt had arisen before the transfer of the territory but had not yet been settled by the time the change of sovereignty had occurred. The petitioner had claimed that he had been released from his obligation by the disappearance of Sardinian law which, according to him, had followed automatically from the disappearance of Sardinian sovereignty in Savoy. The answer to his claim had been that not only had Sardinian law continued to apply, but that the debt owed to the predecessor State which had not been paid, was now payable to the successor State.

26. Mr. CASTAÑEDA said that, in the light of Mr. Ago's comments, he wondered whether the rule laid down in article 11 was correct. In the case mentioned in paragraph (4), the debt was bound to pass to the successor State since it related to registration taxes which were linked with the sovereignty and the activity of the predecessor State in the territory. In the case of taxes payable for services provided by the predecessor State, however, it was the predecessor State which should remain the creditor, since it was to that State that the taxes were owed. A distinction should, therefore, be made between debts linked to the sovereignty and activity of a State in the territory and certain special debts—duties, taxes, or dues—payable in respect of a service provided by the predecessor State.

27. Mr. BEDJAOUI (Special Rapporteur) said that Mr. Castañeda's comment had been at the heart of the debate in the Commission on article 11.

28. Mr. AGO had referred to the case in which a predecessor State had made a loan to a region which subsequently separated from the State.² He (the Special Rapporteur) had pointed out that in such a case there was no link between the claim and the territory to which the succession of States related and that, as a result, the debt did not pass.³ He had also pointed out, however, that the predecessor State could not continue to collect certain debts—particularly certain taxes—because it had lost its *imperium* over the territory.⁴ It was for that reason that he had proposed the rule in article 11, which applied especially to tax debts. The question was far from settled because, in the view of certain members of the Commission such as Mr. Ushakov, tax debts which had been due to the predecessor State remained due to that State. The Commission would therefore have to take up the question again at some later stage.

29. Mr. USHAKOV said it should not be overlooked that article 11 had been placed within square brackets. Although, in his own opinion, the article did not belong to the succession of States, he thought that the Commission should not reopen the discussion on the substance.

30. Mr. TSURUOKA said it would be better to mention at the outset the reasons why the Commission had placed article 11 between square brackets, rather than in paragraphs (10) and (11).

31. Mr. BEDJAOUI (Special Rapporteur) said that, before giving the reasons why the article had been placed in square brackets, it was essential to explain the contents of the article.

Paragraph (4), as amended, was approved.

Paragraph (5)

32. Mr. KEARNEY suggested that it would be clearer if the phrase “on 28 October 1918” were inserted after the word “existence” at the end of the first clause in the first sentence of the paragraph.

It was so agreed.

33. Mr. KEARNEY said that the circumstances surrounding the decision in the Territory of Hlučín case were not clear. It was possible to construe the last sentence of the paragraph as meaning that the Czechoslovak Supreme Court had held that the debt remained due even though the duty had been paid to the German Treasury prior to the transfer of the territory. If that construction was correct, the case should not be cited, since the decision was at variance with the rule the Commission had adopted in draft article 11.

34. Mr. BEDJAOUI (Special Rapporteur) said he agreed that the Territory of Hlučín case, as outlined in the 1963 *Yearbook*,⁵ was not very clear. He therefore proposed that all references to the case in paragraph (5) be deleted.

It was so agreed.

² See 1329th meeting, para. 14.

³ *Ibid.*, para. 17.

⁴ See 1322nd meeting, para. 3.

⁵ *Yearbook . . . 1963*, vol. II, p. 135, document A/CN.4/157, paras. 355-356.

35. Sir Francis VALLAT said he could appreciate that many members of the Commission had doubts about the value of the precedents cited, since they were decisions of national courts in cases where the nation concerned had been the party in interest. Such doubts should not, however, be used as justification for any redrafting at the current stage of article 11, which, it should not be forgotten, appeared in square brackets.

Paragraph (5), as amended, was approved.

Paragraph (6)

36. Sir Francis VALLAT proposed that the names of the predecessor and successor States should be given in the paragraph.

It was so agreed.

Paragraph (6), as amended, was approved.

Paragraph (7)

37. Sir Francis VALLAT said it was an exaggeration to employ the word “confirmed” in the first sentence of the paragraph. He would suggest that the first part of that sentence be amended to read: “The principles which appear from these decisions may be supported by the provisions of several agreements . . .”.

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraphs (8)-(10)

Paragraphs (8)-(10) were approved.

The commentary to article [11] was approved.

Commentary to article 3, sub-paragraph (e)

(Use of terms) (A/CN.4/L.233/Add.3)

The commentary to article 3, sub-paragraph (e), was approved.

Commentary to article X

(Absence of effect of a succession of States on third State property) (A/CN.4/L.233/Add.3)

The commentary to article X was approved.

Section B, as amended, was approved.

Chapter III of the draft report, as a whole, as amended, was approved.

Chapter II

STATE RESPONSIBILITY

(resumed from the previous meeting)

B. DRAFT ARTICLES ON STATE RESPONSIBILITY (*continued*)

38. The CHAIRMAN invited the Commission to resume consideration of chapter II of the draft report, paragraph by paragraph, starting with the commentary to article 12 *ter* [14].

Commentary to article 12 ter [14]⁶

(Conduct of organs of an insurrectional movement)
(A/CN.4/L.232/Add.5)

Paragraph (1)

39. Mr. KEARNEY proposed that the words "in the extreme case" towards the end of the second sentence should be deleted, as their meaning was not clear.

40. Mr. AGO (Special Rapporteur) said that the original French was *à la rigueur*. He suggested that the expression be deleted wherever it occurred.

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

41. Mr. KEARNEY suggested that, in the first sentence, the words "is often dealt with" should be replaced by the words "is often treated". That change would make it clear that it was writers who often dealt with the two subjects in conjunction, not that the subjects arose together in practice.

It was so agreed.

42. Mr. AGO (Special Rapporteur) pointed out that the amendment did not affect the French version.

Paragraph (2), as amended, was approved.

Paragraph (3)

43. Mr. KEARNEY said he had some misgivings regarding the use of the expression "a genuine insurrectional movement", in the third sentence, and the suggestion in that sentence that the expression was acquiring a new meaning in international law. The question of insurrectional movements had a long history in the jurisprudence of international law and there had been no significant change recently in that jurisprudence.

44. Mr. AGO (Special Rapporteur) suggested that the English version should be amended to read: "... a real insurrectional movement, in the sense which this term has in international law ...".

45. Sir Francis VALLAT proposed that the word "genuine"—or "real" in the Special Rapporteur's suggested wording—be dropped. The intended meaning was rendered quite clearly by the expression "an insurrectional movement, in the sense which this term has in international law".

Paragraph (3) was approved with that amendment.

46. Mr. SETTE CÂMARA said he noted that the expression "a genuine insurrectional movement" was also used elsewhere, in particular at the end of the first sentence of paragraph (2). He suggested that it be replaced throughout the text by the words "an insurrectional movement".

It was so agreed.

Paragraphs (4)-(11)

Paragraphs (4)-(11) were approved.

⁶ The figures in square brackets represent the numbers of the articles as they appear in the report.

Paragraph (12)

47. Mr. KEARNEY said he noted the reference in the fifth sentence to the fact that the authorities of a State had "failed to punish adequately the perpetrators of the injurious acts committed" during a struggle with an insurrectional movement. Paragraph (12) appeared to him to place exaggerated emphasis on the responsibility of the territorial State on the grounds that it had failed to punish adequately the wrongdoers. In actual fact, in almost all the examples which were given in the commentary, international responsibility was attached to a State because of the failure by its authorities to prevent the occurrence of an internationally wrongful act rather than because of their failure to punish the wrongdoers.

48. A related problem arose in connexion with the fourth sentence of paragraph (26) which read: "Another alleged exception to the general principle which seems to call for a negative conclusion is the attribution to a State of the wrongful conduct of an unsuccessful insurrectional movement in the event of a grant of amnesty by the State concerned".

49. Mr. AGO (Special Rapporteur) said that he now regretted his decision to eliminate from the commentary the reference to certain cases which were of interest in connexion with the point raised by Mr. Kearney. In particular, there was a typical case in which the claimant was the United States and where the respondent State had been blamed for granting an amnesty to the perpetrator of an internationally wrongful act. The fact that the wrongdoer had been released after a short period of imprisonment instead of serving his full sentence had been considered as a failure to punish him adequately and hence as a breach of international law.

50. A government was always free to grant an amnesty for offences against internal law. It could not, however, grant an amnesty for internationally wrongful acts. The distinction was one on which much emphasis was placed by authoritative writers.

51. It was worth bearing in mind that, during the struggle against an insurrectional movement, it was extremely difficult for a State to prevent internationally wrongful acts from being committed by the insurgents. It was, however, comparatively easy for the State to punish the wrongdoers after the insurrection had been overcome. It should also be remembered that the first duty of the State was to endeavour to prevent the commission of an offence; if it did not succeed in preventing the offence, it had a duty to punish the offenders.

52. Mr. KEARNEY suggested that a reference be included in the commentary to the case mentioned by the Special Rapporteur.

53. Mr. AGO (Special Rapporteur) said that he was prepared to do that.

54. Sir Francis VALLAT said he agreed that the commentary placed undue emphasis on failure to punish and not enough emphasis on actual negligence with regard to prevention in the course of the insurrectional movement.

55. He suggested that, in the fifth sentence, the words “putative negligence” be replaced in the English version by the words “alleged failure”.

It was so agreed.

Paragraph (12), as amended, was approved.

Paragraph (13)

56. Sir Francis VALLAT suggested the deletion, in the first sentence, of the word “moreover”.

It was so agreed.

Paragraph (13), as amended, was approved.

Paragraphs (14) and (15)

Paragraphs (14) and (15) were approved.

Paragraph (16)

57. Sir Francis VALLAT suggested that the opening words of the paragraph “The principle of the non-responsibility of the State for damage . . .” should be reworded in the English version to read: “The principle that the State is not responsible for damage . . .”.

58. Mr. AGO (Special Rapporteur) proposed that the words “The principle of” be deleted.

Paragraph (16), was approved with that amendment.

Paragraphs (17)-(30)

Paragraphs (17)-(30) were approved.

Paragraph (31)

59. Mr. AGO (Special Rapporteur) said that the second sentence should be amended by deleting the words “The principle of” before the words “the non-attribution to a State . . .”.

60. Mr. KEARNEY said that a correction was necessary to the English version of the third sentence, where the word “not” should be inserted after the opening words “the purpose of this clause is . . .”.

Paragraph (31) was approved with those changes.

The commentary to article 12 ter [14], as amended, was approved.

Commentary to article 13 [15]

(Attribution to the State of the act of an insurrectional movement which becomes the new government of a State or which results in the formation of a new State)
(A/CN.4/L.232/Add.6)

Paragraph (1)

61. Mr. KEARNEY suggested that, in the second sentence of the English version, the phrase “against the authority of which it rose up” be reworded to read “against whose authority it rebelled”.

Paragraph (1) was approved with that amendment.

Paragraph (2)

62. Mr. KEARNEY suggested that, in the second sentence of the English version, the words “according as” be replaced by the words “according to whether”.

Paragraph (2) was approved with that amendment.

Paragraphs (3)-(5)

Paragraphs (3)-(5) were approved.

Paragraph (6)

63. Sir Francis VALLAT said that the second part of the third sentence should read: “. . . without any break in the continuity . . .”.

64. Mr. KEARNEY said that the English version of the third sentence needed to be redrafted.

Paragraph (6) was approved on that understanding.

Paragraph (7)

65. Mr. KEARNEY said he had some misgivings regarding the content of the last sentence of paragraph (7). The question whether an insurrectional movement replaced the structures of the State in such a manner as to amount to the establishment of a new State was one on which very different views were strongly held both by writers and by governments. And since it was not directly connected with State responsibility, it was undesirable to speculate on it. The same issue was dealt with in the second part of the concluding sentence of paragraph (21) of the commentary, giving rise to the same difficulties. The inclusion of those two passages made it appear as though the Commission were adopting a theory which it would not necessarily have endorsed had it held a thorough discussion on what was a rather confused subject.

66. Mr. AGO (Special Rapporteur) said that he agreed with Mr. Kearney’s remarks. He suggested that the concluding portion of the last sentence of paragraph (7) be deleted and the whole sentence redrafted to read: “It would no longer be a matter of attributing to the State the conduct of organs of a previous government of the same State but rather a question involving the existence of two different States”.

Paragraph (7) was approved with that amendment.

Paragraph (8)

67. Mr. KEARNEY said he had doubts about the content of the last sentence, which suggested that the difficulties experienced by an insurrectional movement could be accepted as extenuating circumstances when determining the international responsibility of the State.

68. Mr. AGO (Special Rapporteur) said that the sentence had been included in order to cover the comment of two members, during the discussion on article 13, that an insurrectional movement sometime experienced difficulties in abiding by the rules of international law.

69. Mr. KEARNEY said that very serious issues would be raised if a general statement were made to the effect that such difficulties constituted extenuating circumstances. He was thinking, in particular, of the problem of war crimes, for which no such excuse could be attempted.

70. Mr. AGO (Special Rapporteur) suggested that the last sentence of paragraph (8) be deleted.

It was so agreed.

Paragraph (8), as amended, was approved.

*Paragraphs (9)-(14)**Paragraphs (9)-(14) were approved.**Paragraph (15)*

71. Sir Francis VALLAT suggested that, in the second sentence, the words "stated flatly" in the English version should be replaced by the words "stated clearly".

*Paragraph (15) was approved with that amendment.**Paragraphs (16)-(20)**Paragraphs (16)-(20) were approved.**Paragraph (21)*

72. Mr. AGO (Special Rapporteur), referring to Mr. Kearney's comments on paragraph (7), suggested that the concluding part of the last sentence of paragraph (21) beginning with the words "in which the success of a revolutionary movement might involve a change . . ." be deleted.

*Paragraph (21) was approved with that amendment.**Paragraph (22)**Paragraph (22) was approved.*

The commentary to article 13 [15], as amended, was approved.

The meeting rose at 1.10 p.m.

1356th MEETING

Wednesday, 23 July 1975, at 4.45 p.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Castañeda, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Draft report of the Commission on the work of its twenty-seventh session

(A/CN.4/L.235 and Corr.1 and Add.1, and Add.3-6)

(continued)

Chapter IV

THE MOST-FAVOURLED-NATION-CLAUSE

(resumed from the 1354th meeting)

1. The CHAIRMAN invited the Commission to resume consideration of chapter IV of the draft report.

A. INTRODUCTION (A/CN.4/L.235/Corr.1) (continued)

*Paragraphs (40)-(42)**Paragraphs (40)-(42) were approved.*

The introduction to chapter IV of the draft report, as amended, was approved.

B. DRAFT ARTICLES ON THE MOST-FAVOURLED-NATION CLAUSE (A/CN.4/L.235/Add.1) (continued)

2. The CHAIRMAN said that section B of chapter IV included the text of the draft articles on the most-favoured-nation clause already adopted by the Commission at the 1352nd and 1353rd meetings and the commentaries to those articles.¹

Commentary to article 6 ter/bis [13]²

(Irrelevance of the fact that treatment is extended gratuitously or against compensation) (A/CN.4/L.235/Add.3)

3. The CHAIRMAN invited the Commission to resume its consideration, paragraph by paragraph, of the commentaries to the draft articles on the most-favoured-nation clause, starting with the commentary to article 6 *ter/bis* [13].

Paragraph (1)

4. Mr. KEARNEY suggested that, in the concluding phrase of the last sentence of paragraph (1), the words "do the rights of the beneficiary State depend on whether the promises of the granting State were made . . .?" should be reworded to read: "are rights of the beneficiary State affected by whether the promises of the granting State to a third State were made . . .?".

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraphs (2)-(6)

Paragraphs (2)-(6) were approved.

Paragraph (7)

5. Mr. USTOR (Special Rapporteur) said that the Latin expression "*cadit quaestio*" should be replaced by the words "the question does not arise".

Paragraph (7) was approved with that amendment.

The commentary to article 6 ter/bis [13], as amended, was approved.

Commentary to article 6 quater [20]

(The exercise of rights arising under a most-favoured-nation clause and compliance with the laws of the granting State) (A/CN.4/L.235/Add.3)

6. Mr. TSURUOKA said that the commentary to article 6 *quater* dealt only with the unconditional most-favoured-nation clause. Perhaps a commentary should be added on the subject of the conditional most-favoured-nation clause.

7. Mr. USTOR (Special Rapporteur) said that paragraph (6) explained that, although the commentaries and precedents referred to cases of unconditional clauses, the rule proposed in article 6 *quater* applied also to cases where the clause was coupled with the requirement of material reciprocity.

¹ The commentary to articles 6 [8], 6 *bis* [9] and 6 *ter* [10] was approved at the 1354th meeting.

² The figures in square brackets represent the numbers of the articles as they appear in the report.