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Summary record of the 1471st meeting

Topic:
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Paragraph (16)

37. Mr. SCHWEBEL proposed that, in the English text, the word "internationalists" should be replaced by the word "commentators", since "internationalist" did not signify a specialist in international law but an advocate of internationalism.

38. Mr. BEDJAOUÏ (Special Rapporteur) proposed that, in view of the problem posed by the translation of the word *internationalistes* into English, it should be replaced by the expression "authors on international law".

It was so agreed.

Paragraph (16), as amended, was approved.

Paragraphs (17)-(38)

Paragraphs (17)-(38) were approved.

Paragraph (39)

39. Mr. YANKOV proposed that, at the end of the last sentence, the word "independent" should be inserted before the word "State".

It was so agreed.

Paragraph (39), as amended, was approved.

Paragraphs (40)-(46)

Paragraphs (40)-(46) were approved.

Paragraph (47)

40. Mr. SCHWEBEL said that paragraph (47) did not take sufficient account of the views expressed by the many members of the Commission who had opposed the inclusion of the word "international" in the text of article 18. He therefore proposed that the paragraph should be amplified by the replacement of the first sentence by the following text:

"On the other hand, most members of the Commission did not favour inclusion of the term 'international' since, in their view, international law, including that of State succession, has been and quite rightly remains concerned with the interests of aliens as well as of States. No question of interference in a State's internal affairs arose. It was pointed out that the use of the word 'international' in the text would be contrary to the practice of States, which contained thousands of cases of succession of States to debts which were not debts on an inter-State or international plane but were State debts whose creditors were alien individuals or corporations. A great part, if not the bulk, of credit currently extended to States derives from foreign private sources, and it would be a regressive rather than progressive development if such credit were to be excluded from the Commission's draft."

41. His proposed amendment sought to emphasize, on the one hand, that international law did not take into account simply the interests of foreign States but also the interests of foreign individuals and, on the other hand, that a great part of the credit extended to States derived from foreign private sources.

42. Mr. BEDJAOUÏ (Special Rapporteur) said that he saw no major difficulty in accepting the text proposed by Mr. Schwebel. The two ideas introduced were important, if not for most of the members of the Commission, at

least for some of them. Mr. Schwebel was right to emphasize that international law was not concerned exclusively with States and that its ultimate beneficiary was the individual, who was the corner-stone of every society. Mr. Schwebel was also right to emphasize the importance of private credit, which fed the international financial market and enabled the countries of the third world to obtain the resources necessary for their development. However, too much emphasis should not be placed on the latter idea, for the stage at which newly independent States sought to benefit from international credit derived from private sources came after the stage of decolonization and State succession. The argument that the sources of credit open to developing countries should not be restricted had no point inasmuch as the question of international credit to newly independent States arose after the question of State succession and had no bearing on it.

43. Mr. YANKOV proposed that, in the first sentence of the text proposed by Mr. Schwebel, the words "most members" should be replaced by "several members". Again, the words "a great part" in the fourth sentence should be replaced by "an important part" and the words "if not the bulk" should be deleted, together with the clause "and it would be a regressive rather than progressive development if such credit were to be excluded from the Commission's draft", which seemed to introduce a subjective element.

44. Mr. USHAKOV supported the first of Mr. Yankov's proposals. The Commission's report should always say "a member" or "several members", and never "most members", as it was impossible to determine the exact number of members of the Commission who had supported a particular view.

45. Mr. TABIBI said that, in the fourth sentence of the text proposed by Mr. Schwebel, the expression "a great part" over-emphasized private sources of international credit to the detriment of two other equally important sources, namely, international organizations and States. In Afghanistan and most other Asian countries and in Africa, credit was essentially in the form of inter-State loans.

46. Mr. SCHWEBEL agreed to the change proposed by Mr. Yankov. Nevertheless, he would prefer the words "most members" to be replaced by "many members".

It was so agreed.

The alteration proposed by Mr. Schwebel, as amended, was approved.

Paragraph (47), as amended, was approved.

The commentary to articles 17 and 18, as amended, was approved.

The meeting rose at 1.10 p.m.

1471st MEETING

Thursday, 28 July 1977, at 10.05 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian,

Mr. Francis, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

**Draft report of the Commission on the work of its
twenty-ninth session (continued)**

**CHAPTER III. Succession of States in respect of matters
other than treaties (continued) (A/CN.4/L.260 and Add.1-3)**

- B. Draft articles on succession of States in respect of matters other than treaties (continued) (A/CN.4/L.260 and Add.1-3)**
2. TEXT OF ARTICLES 17-22, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS TWENTY-NINTH SESSION (continued) (A/CN.4/L.260/Add.1-3)

Commentary to article 19 (Obligations of the successor State in respect of State debts passing to it) (A/CN.4/L.260/Add.2)

1. Mr. RIPHAGEN said that he had certain doubts about the practical application of articles 19 and 20. Taken alone, article 19, which by implication concerned creditors, seemed to answer in the affirmative the question whether succession of States affected their rights. Paragraph 1 of article 20, however, answered that question in the negative, as did the first proposition in paragraph 2 of that article, relating to agreements between predecessor and successor States. In both those cases, there was no extinction or arising of obligations so far as creditors were concerned. On the other hand, as was clear from article 20, paragraph 2 (a), the agreement could be invoked against a creditor who had accepted it.

2. Moreover, he did not really see how the proviso in article 20, paragraph 2 (b), could be applied to the case covered by article 21, namely, transfer of part of the territory of a State. Article 21, paragraph 1, implied that, in the case contemplated by that article, the consequences of an agreement between the predecessor and successor States would necessarily be "in accordance with the other applicable rules of the articles in the present Part"; even on the basis of a less literal interpretation, however, and assuming that article 20, paragraph 2 (b), referred to some principle underlying the agreement, such a principle could be discerned only in article 21, paragraph 2, which applied in the absence of an agreement. The combined effect of article 19, article 20, paragraph 2 (b), and article 21, paragraph (2), therefore seemed to be that any agreement between the predecessor and successor States regarding the transfer of a part of the territory could be invoked against a creditor who had not accepted it, provided that the agreement had had as its consequence the passing of an equitable proportion of the State debt of the predecessor State to the successor State.

3. His remarks were not made with a view to the amendment of the text of article 19 or the commentary thereto, and were simply food for thought.

The commentary to article 19 was adopted.

Commentary to article 20 (Effects of the passing of State debts with regard to creditors) (A/CN.4/L.260/Add.2)

4. Mr. USHAKOV reiterated the reservations that he had expressed during the consideration of article 20,¹ particularly with regard to paragraph 2 (a). As to the drafting, he questioned the meaning of the word "other" in the expression "other applicable rules" in paragraph 2 (b).

Paragraphs (1)-(9)

Paragraph (1)-(9) were approved.

Paragraph (10)

5. Mr. SCHWEBEL, referring to the penultimate sentence, said that he was not altogether clear as to the meaning of the phrase "or, if appropriate, private or juridical persons under the jurisdiction of predecessor or successor States". What was the exact meaning of the words "if appropriate", and was the expression "private or juridical persons" meant to cover aliens as well as nationals? In his view, either the whole phrase should simply be deleted or else its meaning should be made clear.

6. Mr. BEDJAOUI (Special Rapporteur) said that he thought the text should stay as it was. The words "if appropriate" gave the sentence the flexibility which Mr. Schwebel desired.

7. The CHAIRMAN suggested that, in the English version, the words "if appropriate" should be replaced by the words "when appropriate", which was closer to the French expression *le cas échéant*.

It was so agreed.

Paragraph (10), as amended, was approved.

Paragraph (11)

8. Mr. QUENTIN-BAXTER said that, in his view, the word "other" in article 20, paragraph 2 (b), had an essential function, which could be illustrated in particular by relating article 20 to article 21. His understanding of the first of the two propositions in article 21 was that the creditor was bound by an agreement between the predecessor and successor States if he had accepted it. The word "other" in article 20, paragraph 2 (b), therefore referred to the "applicable rules of the articles in the present Part" other than the rule that the predecessor and successor States should settle questions concerning the passing of State debts by agreement. To omit the word "other" would be tantamount to treating as a residuary rule the rule that the predecessor and successor States should conclude an agreement, with the result that there would be a kind of perpetual *renvoi* from one rule to another. To make the meaning clearer, he proposed the addition of the following words at the end of the penultimate sentence of paragraph (11) of the commentary: "that is, with the applicable rules of the present Part other than the rule that questions relating to succession should be settled by agreement between the predecessor and successor States".

9. Mr. BEDJAOUI (Special Rapporteur) endorsed Mr. Quentin-Baxter's proposal. He reminded the Commission that there were two kinds of rules: the rules which the predecessor State and the successor State freely imposed

¹ 1447th meeting, para. 28.

on themselves by agreement and the residuary rules which the Commission was seeking to bring out in the draft articles.

The proposal by Mr. Quentin-Baxter was approved.

Paragraph (11), as amended, was approved.

Paragraph (12)

Paragraph (12) was approved.

The commentary to article 20, as amended, was approved.

Introductory commentary to section 2 (Provisions relating to each type of succession of States) (A/CN.4/L.260/Add.2)

The commentary to section 2 was approved.

Commentary to article 21 (Transfer of part of the territory of a State) (A/CN.4/L.260/Add.2)

The commentary to article 21 was approved.

Commentary to article 22 (Newly independent States) (A/CN.4/L.260/Add.3)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

10. Mr. SCHWEBEL said that the paragraph omitted to state that the dependence of one economy on another was not an exclusive characteristic of former colonial territories. In the modern world, economies were typically interdependent although, in the case of former colonial territories, dependence might be particularly marked. He therefore proposed, with regard to the ninth sentence of the paragraph, that the word "particularly" should be inserted after the word "remain"; that the full stop should be replaced by a comma; and that the words "even taking account of the fact that the economies of nearly all countries are interdependent" should be added at the end of the sentence.

11. Mr. BEDJAOUI (Special Rapporteur) said that he was grateful to Mr. Schwebel for pointing out that all countries were economically interdependent. However, equality before the law often went hand in hand with *de facto* inequality and, just as some countries were more equal than others, some countries were more dependent than others. He could none the less agree to Mr. Schwebel's proposal, which strengthened his own position.

The proposal by Mr. Schwebel was approved.

Paragraph (2), as amended, was approved.

Paragraphs (3)-(10)

Paragraphs (3)-(10) were approved.

Paragraph (11)

12. Mr. SCHWEBEL said that the commentary seemed to suggest that "odious debts" would normally be excluded from the succession, which was not consistent with the fuller exposition of that subject in the report. He therefore proposed the deletion of the whole of the last sentence of the paragraph or, alternatively, of the phrase reading "which would normally be excluded from succession as 'odious debts'."

13. Mr. BEDJAOUI (Special Rapporteur) agreed to Mr. Schwebel's proposal to delete the last sentence of paragraph (11).

The proposal by Mr. Schwebel was approved.

Paragraph (11), as amended, was approved.

Paragraphs (12)-(38)

Paragraphs (12)-(38) were approved.

Paragraph (39) (and paragraphs (40)-(51))

14. Mr. SCHWEBEL proposed the addition of some wording along the following lines at the end of the paragraph: "That situation is characterized in many cases by an extremely heavy and rapidly increasing burden of external debt". That would summarize what he understood to be the gist of paragraphs (40) to (51), namely, the considerable indebtedness of many newly independent States.

15. He further proposed the deletion of paragraphs (40) to (51), first, because they consisted largely of an economic analysis, which was not really within the Commission's sphere of competence. Economists often arrived at widely differing conclusions on the basis of identical data and, while not himself an economist, he regarded the analysis as debatable in several respects. Second, those paragraphs were of questionable relevance since they mainly described a situation that had arisen since States had achieved independence. Third, the account of the financial situation of newly independent States was disproportionately long by comparison with the commentaries to other draft articles.

16. Mr. BEDJAOUI (Special Rapporteur) said that he strongly opposed the deletion of paragraphs (40) to (51), as Mr. Schwebel proposed. In the commentary to article 22, he had referred to the disastrous financial situation of the newly independent States because the Commission had placed great emphasis on the debt burden of the third world and because some of its members had demanded that the debts of newly independent States should be completely wiped out. A further reason had been to call the attention of the Sixth Committee of the General Assembly to the importance of the matter. It was not an economic analysis, as Mr. Schwebel maintained, but a factual presentation of official United Nations, IBRD and UNCTAD figures, which were not open to dispute. The problem of third world indebtedness lay at the core of all the multilateral talks that had taken place and were still taking place, both in the United Nations and in the specialized agencies and at conferences such as the Conference on International Economic Co-operation or "North-South Conference", to which the United States had made an important contribution. He therefore urged Mr. Schwebel not to press for the deletion of paragraphs (40) to (51), which represented the least that could be said on the matter in the commentary.

17. The argument that those paragraphs dealt with a situation that had arisen since the accession of third world States to independence in no sense contradicted his position; on the contrary, it strengthened it. For the commentary, by indicating that the newly independent countries wanted the debts that they had contracted as sovereign States since their accession to independence to be wiped out, highlighted the need for the application, *a fortiori*, of the clean-slate principle to debts contracted on behalf of those countries by the metropolitan country.

18. Mr. DADZIE said that the figures quoted by the Special Rapporteur served to illustrate the importance of a subject that had engaged a great deal of the Com-

mission's attention, and would bring home forcefully to others who were also not economists the issues involved. He therefore considered that paragraphs (40) to (51) should be retained, and he appealed to Mr. Schwebel not to press his proposal.

19. Mr. FRANCIS said that, for reasons of both principle and procedure, it would be unwise to delete paragraphs (40) to (51) at that juncture. In the general debate, some members had expressed alarm at the disturbing situation revealed by the Special Rapporteur's report, and the Sixth Committee would undoubtedly wish to have the information in question at its disposal when it came to consider article 22. He therefore favoured the retention of paragraphs (40) to (51) and appealed to Mr. Schwebel to withdraw his proposal.

20. Mr. SCHWEBEL said that, if the Commission wished to retain paragraphs (40) to (51), he would have certain changes to suggest and would also request that his views on the matter should be included in the report. A further, albeit secondary consideration, was that some of the material in those paragraphs had not been examined by the Commission before.

21. The CHAIRMAN invited the Commission to resume its consideration of the commentary to draft article 22, paragraph by paragraph, and to examine Mr. Schwebel's points as he raised them.

Paragraph (39) was approved.

Paragraph (40)

22. Mr. YANKOV proposed that the word "so-called" in the second sentence should be deleted.

It was so agreed.

23. Mr. SCHWEBEL proposed the addition, at the end of the first sentence, of the words "and to meet current expenses" to take account of the fact that countries now borrowed money not only to pay for development but also to meet other expenditure.

24. Mr. BEDJAOU (Special Rapporteur) said that he would be glad to agree to the addition proposed by Mr. Schwebel, which emphasized further the seriousness of the financial situation of many newly independent States, but he feared that the words in question might be misinterpreted. In the 1930s, when the League of Nations had considered the question of attainment by Iraq of independence, it had taken the view that a country should fulfil a number of conditions to attain independence. More particularly, it should have the requisite financial capacity to meet its administrative expenses. A statement in the commentary that sovereign States had had to contract loans not only in an attempt to overcome their underdevelopment but also to meet their current expenses would certainly highlight the financial straits of a large number of newly independent States, but it might also give the impression that those States were incapable of governing themselves since they could not even meet their current administrative expenses. Consequently, he could not agree to Mr. Schwebel's proposal, which might be interpreted unfavourably.

25. Mr. DADZIE said that paragraph (40) reflected a certain understanding which all members of the Commission had shared. Mr. Schwebel's suggested wording

might create confusion and he therefore appealed to him not to press his proposal.

26. Mr. SCHWEBEL said that his suggestion simply expressed an incontrovertible fact. If that was the wish of the Commission, however, he would not press the matter.

27. The CHAIRMAN said that Mr. Schwebel's position might be reflected later by the addition of a foot-note to the effect that one member of the Commission had stated that he found paragraphs (40) to (51) unacceptable.

Paragraph (40), as amended, was approved.

Paragraphs (41) and (42)

Paragraphs (41) and (42) were approved.

Paragraph (43)

28. Mr. SCHWEBEL said that his concern about the inclusion of paragraphs (40) to (51) was particularly brought out by paragraph (43), which referred to the increase in inflation without discussing the reasons for it and stated that the prices of manufactures exported by the developed countries had increased "at an unprecedented rate". He wondered what precedents had been taken into account and how far back they went. Further, the reference to deterioration in terms of trade, whether correct or not, was an analytical statement and not simply a factual observation. The remark about that process having taken place "to the detriment" of the developing countries apparently encompassed all such countries and might therefore be open to question. In order to save time, however, he would not seek the amendment of the paragraph and would have his position reflected by the insertion of a foot-note, as suggested by the Chairman.

29. The CHAIRMAN suggested that the word "unprecedented" in the last sentence should be replaced by the words "exceptionally high".

It was so agreed.

Paragraph (43), as amended, was approved.

Paragraphs (44)-(47)

Paragraphs (44)-(47) were approved.

Paragraphs (48)-(51)

30. Mr. SCHWEBEL said that paragraphs (48) to (51) were not a matter of economic exposition or analysis; they dealt with means of remedying the dramatic situation of developing debtor countries. Action to that end was at present being discussed in several international forums but was not the concern of the Commission. He therefore suggested that paragraphs (48) to (51) should be deleted.

31. Mr. BEDJAOU (Special Rapporteur) said that he opposed the deletion of paragraphs (48) to (51) but was ready to consider drafting suggestions concerning their wording. He felt that paragraph (48) should be retained as it drew attention to the position of the debtor countries, which had been expressed by a hundred or so Heads of State or Government of the non-aligned countries at Algiers in 1973. He nevertheless proposed that, in the second sentence, the words "have established quite clearly" should be replaced by the words "have indicated".

It was so agreed.

32. Mr. RIPHAGEN observed that paragraphs (48) to (51) merely pointed to the need for solutions to the general problem of developing-country indebtedness; they did not actually propose any solutions. He thought that the Commission would be ignoring the realities of contemporary life if it decided to delete those paragraphs, although they might perhaps be condensed.

33. Mr. SETTE CÂMARA said that, in his opinion, paragraphs (48), (49) and (51) should be retained, for they merely described steps taken in other international forums and there was no reason why the Commission should refrain from referring to those steps. He suggested, however, that the Commission might, as a compromise, delete paragraph (50), which simply referred to a draft resolution submitted to the Second Committee of the General Assembly.

34. Mr. FRANCIS agreed that paragraphs (48), (49) and (51) should be retained. He supported Mr. Sette Câmara's suggestion that paragraph (50) should be deleted.

35. Mr. TSURUOKA said that he did not question the value of a reference to the financial situation of the newly independent countries. However, he proposed that, as a compromise, paragraphs (48) to (51) should take the form of a foot-note.

36. Mr. TABIBI said that he too supported Mr. Sette Câmara's suggestion for the deletion of paragraph (50). Paragraphs (48), (49) and (51) should be retained, however, because the question of the indebtedness of developing countries was of vital interest to all countries, developed and developing alike, and was not a problem which the Commission could afford to ignore.

37. Mr. CASTAÑEDA said that he supported Mr. Sette Câmara's suggestion for the deletion of paragraph (50) and that he favoured the retention of paragraphs (48), (49) and (51).

38. With regard to paragraph (48), he suggested that the last sentence beginning with the words "At the Fourth Conference of Heads of State or Government of Non-Aligned Countries ..." should be placed in a foot-note because it merely illustrated the statements made in the first two sentences.

39. Mr. BEDJAOUI (Special Rapporteur) endorsed Mr. Sette Câmara's suggestion concerning paragraph (50). Paragraphs (48) to (51) did not seek to propose, still less impose, any solution whatsoever; their sole purpose was to indicate to the Sixth Committee the various kinds of solution now being considered in the international community. He nevertheless agreed to the deletion of paragraph (50) as a compromise.

40. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to delete paragraph (50).

It was so agreed.

41. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to adopt Mr. Castañeda's suggestion that the last sentence of paragraph (48) should be placed in a foot-note.

It was so agreed.

42. Mr. RIPHAGEN said he thought it should be made clear that the commentary to article 22 was designed to illustrate a problem of current importance and that reference had been made to General Assembly resolutions for that purpose. The Commission might add a sentence along the following lines at the beginning of paragraph (48): "The consciousness of the debt problem has been reflected in the proceedings of many international meetings, of which those mentioned in this and the following two paragraphs may serve as illustrations."

43. Mr. YANKOV proposed that, in the sentence suggested by Mr. Riphagen, the words "the consciousness of" should be replaced by the words "a concern about".

44. Mr. BEDJAOUI (Special Rapporteur) supported the suggestion made by Mr. Riphagen, as amended by Mr. Yankov.

Paragraph (48), as amended, was approved.

45. Mr. SCHWEBEL, referring to paragraph (49), said that, since the Commission considered it important to state facts correctly, he hoped it would do so consistently. He therefore suggested the addition, at the end of paragraph (49), of a new sentence reading: "It may be noted that a number of States reserved their position on these provisions."

46. The CHAIRMAN said that it would be more appropriate if the sentence suggested by Mr. Schwebel was placed in a foot-note.

47. Mr. BEDJAOUI (Special Rapporteur) said that it was not the Commission's practice to indicate the manner of adoption of a United Nations resolution. A resolution either existed or it did not. It was what it was and it should not be weakened by a statement that it had formed the subject of reservations by some States. He therefore opposed Mr. Schwebel's proposal, which would create an extremely dangerous precedent.

48. Mr. TABIBI said that he supported the Special Rapporteur's view concerning the force of resolutions adopted by the General Assembly. He therefore found Mr. Schwebel's suggestion concerning paragraph (49) unacceptable.

49. Mr. USHAKOV said that he too considered it quite unacceptable to indicate in the commentary that a particular General Assembly resolution had been the subject of reservations by some Governments.

50. Mr. ŠAHOVIĆ proposed that the commentary should state that the resolution in question had been adopted by consensus.

51. Mr. SCHWEBEL stressed that it was very important that the manner in which the General Assembly resolutions in question had been adopted should be reflected in paragraphs (49) and (51), otherwise readers of the report might gain the impression that those paragraphs reflected the generally accepted view, which was not in fact the case. His purpose was to ensure that the Commission could not be accused of having distorted the facts. In that connexion, contrary to what Mr. Šahović had said, General Assembly resolutions 3201 (S-VI) and 3202 (S-VI), relating to the establishment of a new international economic order, had been adopted without

objection, although they had been accompanied by a number of reservations.

52. The CHAIRMAN said that it was not customary to indicate the manner in which General Assembly resolutions had been adopted.

53. Mr. QUENTIN-BAXTER said that he was not sure whether Mr. Schwebel had given sufficient consideration to the change in the general tenor of the report introduced by the incorporation in paragraph (48) of the sentence suggested by Mr. Riphagen. He also drew Mr. Schwebel's attention to the very specific and accurate statement made in what had now become the second sentence of paragraph (48), namely, that "Solutions agreeable to both developing countries and industrialized creditor states ... have not been easy to achieve". Indeed, he thought that paragraph (51), which a foot-note supplemented to the effect desired by Mr. Schwebel, was the only paragraph in which any emphasis at all had been placed on the question of solutions to the debt problems of developing countries. In his opinion, no one reading the commentary to article 22 would think that the Commission had dwelt heavily on the importance of such solutions.

54. The CHAIRMAN said that, if there was no objection, he would take it that the Commission approved paragraph (49) as it stood.

Paragraph (49) was approved.

55. Mr. CASTAÑEDA suggested that, in the English version of the foot-note to paragraph (51), the words "has not reached" should be replaced by the words "did not reach" since the Conference on International Economic Co-operation had ended.

It was so agreed.

56. The CHAIRMAN said that, if there was no objection, he would take it that the Commission approved paragraph (51) and the foot-note, thereto, as amended in accordance with Mr. Castañeda's suggestion.

Paragraph (51) and the foot-note thereto, as amended, were approved.

57. The CHAIRMAN pointed out that Mr. Schwebel had still to propose the addition of a foot-note reserving his position with regard to paragraphs (40) to (51).

The meeting rose at 1.10 p.m.

1472nd MEETING

Thursday, 28 July 1977, at 3.10 p.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Draft report of the Commission on the work of its twenty-ninth session (*continued*)

CHAPTER III. Succession of States in respect of matters other than treaties (*concluded*) (A/CN.4/L.260 and Add.1-3)

B. Draft articles on succession of States in respect of matters other than treaties (*concluded*) (A/CN.4/L.260 and Add.1-3)

2. TEXT OF ARTICLES 17-22, WITH COMMENTARIES THERETO, ADOPTED BY THE COMMISSION AT ITS TWENTY-NINTH SESSION (*concluded*) (A/CN.4/L.260/Add.1-3)

Commentary to article 22 (Newly independent States) (*concluded*) (A/CN.4/L.260/Add.3)

Paragraphs (48)-(51) (*concluded*)

1. Mr. SCHWEBEL proposed the insertion of a foot-note to paragraph (51); it might be placed after the existing foot-note and should read:

"One member objected to the inclusion of paragraphs (40) to (51) of the present commentary, particularly on the grounds that they contain, in his view, economic exposition and analysis which are not within the sphere of the Commission's competence and that such exposition and analysis in some respects are debatable."

2. The CHAIRMAN said that such foot-notes had been inserted in the Commission's report on previous occasions. He suggested that, as the proposed foot-note reflected the view of only one member and was short, the Commission should not object to its insertion.

It was so agreed.

Paragraphs (52)-(62)

Paragraphs (52)-(62) were approved.

Paragraph (63)

3. Mr. SCHWEBEL said that paragraph (63) could give the impression that the Declaration on the Establishment of a New International Economic Order¹ and the Charter of Economic Rights and Duties of States² had been adopted unanimously. In fact, a large number of States had entered reservations in respect of the Declaration, a number of States had voted against the Charter as a whole, and virtually every industrialized democracy in the world had voted against, or abstained in the vote on, articles 2 and 16 of the Charter. He therefore proposed the insertion of the following foot-note relating to paragraph (63):

"One member believed it important to note that a number of States had voted against the Charter of Economic Rights and Duties of States as a whole, that a larger number of States had voted against articles 2 and 16 of that Charter, and that reservations to the passages quoted from General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) had been entered by a number of States."

4. Mr. DADZIE pointed out that it had been agreed at the previous meeting that it was not for the Commission to indicate how States had voted on resolutions adopted by other bodies. Anyone wishing to obtain such information had only to refer to the records of those bodies. Once a resolution had been adopted, it was a resolution.

¹ General Assembly resolution 3201 (S-VI).

² General Assembly resolution 3281 (XXIX).