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Summary record of the 3381st meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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55. Judge ABRAHAM (President of the International Court of Justice) said that there was no talk of reviewing the Court's Practice Direction relating to the appointment of judges *ad hoc* for the time being. From the Court's perspective, States did not seem to have noticeable problems in finding and nominating judges *ad hoc*, although it did not see the full picture and the real obstacles that States might encounter in the process leading up to their appointment.

56. Judges usually had two assistants, one of whom was a university student selected under the University Traineeship Programme and who remained at the Court for one academic year. Students tended to be from North American universities because those universities had the funds to defray the students' costs; however, an effort had been made in recent years to diversify the pool of universities participating in the Programme. In addition, each judge had a law clerk who was recruited through a regular competitive exam and had a two-year contract that was renewable once only.

57. There was also a legal service in the Registry that provided assistance to the Court in its general judicial and legal work, but the legal experts employed there were not assigned to a specific judge. The President of the Court had a third assistant who was basically a private secretary.

58. The different forms of assistance provided to judges were a fairly recent development. In 2005, there had been only 7 university trainees assisting 15 judges and, until 2000, judges had worked alone except for assistance provided by the legal service of the Registry. The Court encouraged the widest possible selection of applicants in terms of nationality, language and legal background. However, it always chose the best candidates, many of whom would move on to great careers in international law.

59. Mr. CISSÉ said that in the *Dispute concerning delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean* before the International Tribunal for the Law of the Sea, Côte d'Ivoire had requested that provisional measures be prescribed requiring Ghana to suspend all ongoing oil exploration and exploitation operations and to refrain from granting any new permit for oil exploration and exploitation in the disputed area. Nonetheless, while in its order of 25 April 2015 the Tribunal's Special Chamber had prescribed that Ghana undertake no new drilling activity (para. 102), it had effectively allowed the party to continue its ongoing exploration activities. He had never really understood the rationale behind the Special Chamber's order and asked whether Judge Abraham could shed some light on the matter.

60. Judge ABRAHAM (President of the International Court of Justice) said that he could not answer that question as, first, the dispute was still pending before the Tribunal. The judgment on the merits would be issued shortly and should clarify the parties' differing interpretation of the order prescribing provisional measures: Côte d'Ivoire believed that Ghana had not fully complied with the provisional measures by continuing certain ongoing activities, whereas Ghana held that such activities were allowed under the order. Second, he sat as a judge *ad hoc* for the Special Chamber—a task he had accepted before his election as President of the Court. It had been a worthwhile experience as interaction between international tribunals fostered greater understanding and helped to avoid the fragmentation of international law.

61. Mr. GROSSMAN GUILOFF asked what the main challenges were for the Court in adapting to the current reality characterized, *inter alia*, by information overload, the transnational character of disputes and a proliferation of jurisdictions.

62. Mr. LARABA said he would appreciate clarification of Judge Abraham's comment in connection with the cases on the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* that the positions of the International Tribunal for the Former Yugoslavia "must" be taken into account.

63. Judge ABRAHAM (President of the International Court of Justice) said that it would be hard to explain the challenges that lay ahead in the short time available. The Court was certainly aware of the need to adapt its working methods to a constantly changing situation and it regularly reflected on such matters. It would continue to make adjustments and introduce reforms, but not attempt a general overhaul of the international judicial system. Changes could not be made to the Statute of the International Court of Justice, but its Rules and Practice Directions were regularly reviewed.

64. He would use the word "must", but not in the sense that the Court was legally bound to refer to decisions of the International Tribunal for the Former Yugoslavia. An international judge could live in a bubble and simply ignore the case law of other courts; however, that would be ill advised from the standpoint of judicial policy. As far as possible, judges should try to ensure consistency between the decisions of different courts and tribunals.

65. The CHAIRPERSON thanked Judge Abraham for his clear but also subtle replies and informative statement.

The meeting rose at 1 p.m.

3381st MEETING

Tuesday, 25 July 2017, at 3 p.m.

Chairperson: Mr. Georg NOLTE

Present: Mr. Aurescu, Mr. Cissé, Ms. Escobar Hernández, Ms. Galvão Teles, Mr. Grossman Guiloff, Mr. Hassouna, Mr. Hmoud, Mr. Jalloh, Mr. Kolodkin, Mr. Laraba, Ms. Lehto, Mr. Murase, Mr. Murphy, Mr. Nguyen, Ms. Oral, Mr. Ouazzani Chahdi, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Rajput, Mr. Reinisch, Mr. Ruda Santolaria, Mr. Saboia, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Sir Michael Wood.

Succession of States in respect of State responsibility (*continued*) (A/CN.4/703, Part II, sect. G, A/CN.4/708)

[Agenda item 8]

First report of the Special Rapporteur (*concluded*)

1. The CHAIRPERSON invited the Commission to resume its consideration of the first report on succession of States in respect of State responsibility (A/CN.4/708).

2. Ms. ESCOBAR HERNÁNDEZ said that the excellent first report immediately went to the heart of the topic, with draft articles 3 and 4 embodying some fundamental positions on the succession of States in respect of State responsibility. The fact that the Special Rapporteur had relied on the Commission's earlier work on State succession, along with that of the International Law Association and the Institute of International Law, did not in any way diminish the value of the report. Nevertheless, while the latter clearly mapped out the approach to be adopted to the topic and its outcome, it prompted some doubts with regard to both its methodology and its substance.

3. Turning first to methodology, she noted that, apart from its brief discussion of the Commission's earlier work and of the usefulness of the topic, the report was in no way preliminary in nature, as it set the scene for the Commission's deliberations with what was essentially an in-depth analysis of how the Special Rapporteur wished to define the scope of the topic and a preliminary version of what he thought should be some general provisions. Although that was a valid approach, which would enable the Commission to tackle substantive issues immediately, a more detailed preliminary examination of scope and methodology might have been useful.

4. Second, she had her reservations about the statement that the outcome of the topic should be both codification and progressive development. In view of the State practice described in the report, it seemed premature to contend that there was sufficient material for codification at that juncture, although at a later stage, in the light of the evidence which the Special Rapporteur intended to supply, it might be possible to conclude that the topic lent itself to both aspects of the Commission's terms of reference.

5. Third, she was unsure that the outcome should be draft articles. Although she agreed with the Special Rapporteur that it would, generally speaking, be wise to retain a form similar to the Commission's previous work on State succession, that should not prevent members from reflecting on whether draft articles would be the best guarantee of the effectiveness of the Commission's labours, particularly in view of the fact that few States had ratified the two earlier conventions.

6. As for the content of the report, first it was obvious that the practice examined by the Special Rapporteur was necessarily limited, because succession of States was not a daily occurrence. However, it was equally clear that the subject should be studied from a universal perspective and not one restricted to certain regions, even though they were where the most recent examples of succession had taken place. The following reports should therefore look at practice in Africa, Asia and Latin America with a view to deciding whether any general principles did exist.

7. Second, given the great diversity of the State succession processes that had taken place in the twentieth century, the Special Rapporteur was right in holding that it was necessary to adopt a flexible approach which took account of various aspects related to the different possible forms of succession: (*a*) post-colonial or otherwise; (*b*) with the survival or disappearance of the predecessor State; (*c*) through secession, transfer of part of a territory, the unification of two pre-existing States or the break-up of one State into several States; or (*d*) whether it was negotiated or contested. That differentiated approach should, however, be more clearly reflected in the Special Rapporteur's treatment of the topic so as to identify the consequences that the various types of succession might have on the applicable rules on State succession in respect of responsibility and to show whether, despite the wide variety of situations, a general subsidiary rule could possibly be formulated that would apply to all of them. Unfortunately, the Special Rapporteur did not seem to have applied that criterion of diversity in his first report and the methodology that he had adopted in principle did not bring out all the possible consequences. It was to be hoped that the Special Rapporteur would bear that concern in mind in his future reports.

8. Third, it was a moot point whether a study of the nature of the rules to be codified and the relevance of agreements and unilateral declarations, the subject of chapter II, section D, was entirely helpful at that stage. Although the conclusions drawn by the Special Rapporteur were quite valid, it might have been more useful to examine those matters after a detailed investigation of practice regarding State responsibility in relation to each type of succession. That research would have provided a wider overall view of practice, which would have made it possible to determine not only the existence or non-existence of a general rule, but also to identify the instruments chosen by States in each actual set of circumstances. The reason for the subsidiary nature of the rules set forth in draft articles 3 and 4 would then have been plainer.

9. Although she concurred with the Special Rapporteur on the scope of the topic as defined in draft article 1, it might have been helpful to include an explicit reference in the text to States' obligations and rights arising from responsibility. Even if the word "effect" covered both aspects, it would be advisable to avoid any ambiguity in interpretation. While the Special Rapporteur was right to limit responsibility to that for internationally wrongful acts and to exclude succession in respect of the responsibility of international organizations, it would be wise to eliminate any possible ambiguity and to make clear that the transfer of obligations ensuing from liability for transboundary harm caused by acts not prohibited by international law in no way affected the origin and nature of an international norm the breach of which constituted an internationally wrongful act and might therefore give rise to international responsibility.

10. Lastly, consideration should be given to the inclusion of a clause limiting the scope of the text to succession in conformity with international law and in

accordance with the principles contained in the Charter of the United Nations, along the lines of article 6 of the 1978 Vienna Convention and article 3 of the 1983 Vienna Convention. Such restrictive wording might be controversial, but there was no obvious reason to exclude it from the draft articles. If a decision were taken not to include it, it would be essential to explain why the Commission had altered its position.

11. In draft article 2, in addition to the definitions already contained therein, with which she broadly agreed, it might be advisable to define "newly independent State", as had been done in the two above-mentioned Vienna Conventions, "internationally wrongful act", "devolution agreement", "claims agreements", "other agreements" and "unilateral declarations".

12. As far as draft article 3 was concerned, it was difficult to determine its nature, because the rules that it contained could be interpreted as general rules which should apply in all circumstances. However, it was equally certain that they referred exclusively to the situation where the issue of responsibility had been regulated through a treaty, in other words circumstances which could be encountered in practice, but which were not the sole or most usual situation. It was true that paragraphs 1, 2 and 3 rested on rules of treaty law and that their purpose was to safeguard the applicability of the *pacta tertiis* principle. However, the last sentence of paragraph 3 and the whole of paragraph 4 seemed unnecessary, as they merely referred to the applicability of the relevant rules of treaty law and might cause some confusion in terms of their relationship to paragraphs 1 and 2. It might therefore be a good idea to revise the wording of the above-mentioned paragraphs by inserting in the first two the phrase "unless so agreed by the third State concerned" and to amend the first sentence of the third paragraph to read "produce full effects between the States parties". That new wording, which could be considered by the Drafting Committee, would make it possible to delete paragraph 4 and to give a detailed explanation in the commentary of the reasons underpinning that draft article as a whole.

13. There was no good reason to reverse the order of the reference to obligations and rights in draft article 4. On the contrary, the order should be the same as in draft article 3 in order to avoid any undesirable interpretation. The effects of a unilateral declaration would indeed differ depending on whether they stemmed from succession to a right or to an obligation. Lastly, it might be possible to delete paragraph 3 and to include its content in the commentary to the draft article.

14. Although the programme of work proposed by the Special Rapporteur was generally acceptable, it was questionable whether some of the matters listed in the penultimate sentence of paragraph 133 could be termed simply "miscellaneous issues" and be relegated to a fourth report along with procedural issues. They all merited in-depth treatment at the same time as the central issues that were to be addressed in 2018 and 2019.

15. She recommended the referral of the draft articles to the Drafting Committee, on the understanding that the Committee would take account of all the opinions expressed at plenary meetings, both those of a substantive nature and those of a procedural character, in particular with regard to when each draft article should be considered by the Drafting Committee.

16. Mr. ŠTURMA (Special Rapporteur), summing up the debate, said that the number and content of statements made during the debate were indicative of a great interest in, and the relevance of, the topic. Some members had expressed concern about the way in which the topic had been chosen at the beginning of the new quinquennium and had been of the view that it ought to have been discussed by the newly constituted Commission. On the other hand, other members had maintained that consideration of the topic was justified in order to fill the gap left by the Commission's earlier work on State responsibility and succession of States. It would not be proper for him during the current plenary meeting to respond to the comments questioning the Commission's decision to take up the topic, but he was prepared to do so at a meeting of the Working Group on methods of work, which was an appropriate forum.

17. Some members had pointed out that it was necessary to clarify whether the purpose of the Commission's work was to codify existing rules or to progressively develop new ones that States would have to follow. Other members had been of the opinion that the Commission could fill existing gaps in the codification of the rules on succession of States in respect of State responsibility.

18. The current topic encompassed the progressive development of international law and its codification. State practice and case law were unevenly developed in various areas and with regard to some kinds of succession of States. It could, however, already be said that both practice and case law seemed to be sufficiently developed with regard to wrongful acts committed by an insurrection movement which led to the creation of a new State, wrongful acts that had started before and continued after the date of succession, and the transfer of the right of a State to exercise diplomatic protection in the case of wrongful acts committed against nationals of the predecessor State. His second report would probably identify a general rule that where the predecessor State still existed, it would continue to be the sole responsible State, unless an agreement or a unilateral declaration provided otherwise.

19. Most speakers had agreed that the outcome of work on the topic should take the form of draft articles accompanied by commentaries. One member had pointed out that the 1978 Vienna Convention and the 1983 Vienna Convention set a precedent in that respect, but others had held that the fact that few States had become parties to the Conventions suggested that draft guidelines might be more suitable as they allowed greater flexibility. His own preference was for draft articles, because work on the topic might include not only codification but also the development of new norms. Experience had shown that, although the two above-mentioned Conventions had not been in force at the time of the dissolution of Czechoslovakia, both successor States had used the principles embodied in the Conventions for their succession. That meant that even if draft articles or conventions were not yet binding for the States concerned, they might serve as

a model for those States' bilateral agreements. The proposed subsidiary or residual nature of general rules and the relevance of agreements and unilateral declarations would afford sufficient flexibility to permit the draft articles' adaptation to a variety of situations.

20. Many members had agreed with him that the work of private bodies, such as the Institute of International Law and the International Law Association, should be taken into account, but should not impede or limit the Commission's research into the topic. One member had contended that the Commission should constantly refer to the Institute's resolution on State succession in matters of international responsibility[405] and had asked how the Special Rapporteur's approach differed from that of the Institute. On the basis of the first report, it was possible to say that the work done thus far differed in at least three respects: the methodology as reflected in the structure of the draft articles and the programme of work; the greater relevance of agreements; and the greater relevance of unilateral declarations. That answer might be interpreted as recognition of a more subsidiary or residual role of any general rules on succession or non-succession.

21. Regarding the case law cited in the report, some members had pointed out that most of the examples provided as evidence for a departure from the traditional rule of non-succession were misguided. For example, concerning the arbitration in the *Lighthouses case between France and Greece*, members had observed that the Permanent Court of Arbitration did not hold Greece liable for the wrongdoings of the predecessor State, but for continuing the unlawful acts of the Ottoman Empire. The report did not question that point, as the continuing wrongful act was certainly the recognized hypothesis. It only noted that a part of the wrongful act committed before the date of succession could not be simply attributed to the successor State, as the autonomous Government of Crete under the Ottoman Empire had been different from the Government of Greece.

22. With respect to the *Gabčíkovo–Nagymaros Project*, some members had stated that, while the report cited that case as an example of a departure from the rule of non-succession, the International Court of Justice had accepted that Slovakia would be liable for the internationally wrongful acts of its predecessor and would receive compensation from Hungary only on the basis of the agreement between the parties. Indeed, the report did not deny the role of the special agreement. However, several issues of succession and responsibility were not resolved by the agreement and they remained the object of dispute. For example, Hungary, while acknowledging that Slovakia could not be deemed responsible for breaches of treaty obligations and obligations under customary international law attributable only to Czechoslovakia, which no longer existed, had argued that such breaches created a series of secondary obligations, namely, the obligation to repair the damage caused by wrongful acts and that those secondary obligations were not extinguished by the disappearance of Czechoslovakia. In other words, it was not the responsibility of Czechoslovakia as such but the secondary obligations created by wrongful acts that continued after the date of succession.

23. Regarding the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, it had been noted by some members that, since the International Court of Justice had not found a violation of the Convention on the Prevention and Punishment of the Crime of Genocide, it had never decided whether the acts of the Socialist Federal Republic of Yugoslavia were attributable to Serbia through succession to State responsibility. He agreed that the Court had not found that Serbia had succeeded to responsibility; it had only examined acts that had occurred both before and after the date of succession and admitted a possibility of transfer of obligations.

24. As to the *Mytilineos Holdings SA* arbitration, he thought, like Mr. Reinisch, that it was not only an interesting case but also relevant in the sense that it seemed to support the view that the continuator State bore sole responsibility and that there was no transfer of responsibility to the successor State.

25. As to the 2002 decision of the Austrian Supreme Court mentioned by Mr. Reinisch, that decision had dealt with a claim for compensation for expropriation brought against Austria by an Austrian citizen who, following his arrest in 1952 by soldiers of the Soviet occupying Power in Austria, had been sentenced to 25 years' imprisonment and had had his property confiscated. The claimant had argued that Austria, by waiving any claims against the Allied Powers on behalf of all Austrian citizens in accordance with article 24 of the 1955 State Treaty for the Re-establishment of an Independent and Democratic Austria, had acted in a manner that amounted to expropriation. The Supreme Court had not dwelt on a possible customary rule on succession, but had simply referred to the doctrinal view of the late Professor Seidl-Hohenveldern. If any conclusion could be drawn from the case, it would probably relate to the specific nature of military occupation and the special nature of the end of the Soviet Union, of which the Russian Federation was generally considered to be the continuator State, not a successor State. That possibility had at least been admitted by the Austrian Supreme Court in the so-called *Russian Embassy* case, in which the Court had found the customary rules on State succession in respect of property to be uncertain.

26. To put it in more general terms, he did not question statements to the effect that State practice was not clear and that cases could be interpreted in different ways. He could even accept that cases of non-succession were more frequent than cases of succession. He only disagreed with the old doctrine or fiction of the highly personal nature of State responsibility that seemed to exclude, on an *a priori* basis, any possible transfer of rights and obligations arising from internationally wrongful acts. First, that fiction was based on a private law analogy, stemming from Roman law, or on a criminal law analogy. Second, a State—at least a modern State, not an absolute monarchy—was very different from natural persons, and any personalization in that regard was misleading. Historically, even treaties were considered as binding between

[405] Resolution on State succession in matters of State responsibility, Institute of International Law, *Yearbook*, vol. 76, Session of Tallinn (2015), pp. 711–719; available from: www.idi-iil.org, *Resolutions*.

monarchs only while they lived, which excluded any automatic succession; that was not the case in modern international law, however. Third, the doctrine of the highly personal nature of State responsibility had been developed many decades previously, before the completion of the codification of State responsibility and the codification of diplomatic protection. However, those draft articles on the responsibility of States for internationally wrongful acts[406] that had been adopted by the Commission had been drafted in an objective fashion and did not support the view that State responsibility was personal or punitive in nature. The rules on diplomatic protection had clearly abolished the continuing nationality requirement, thus making possible a transfer of rights under certain conditions. Those new developments should also be analysed and reflected in the law on succession.

27. Noting that some members had observed that the report devoted more attention to the views of authors than to actual State practice relating to State succession, he agreed that there was a need for more in-depth research in that connection than it had been possible to include in his short preliminary report. Future reports would contain more detailed analysis of such practice.

28. He fully agreed with those members who had pointed out that most of the cases of State practice considered in his first report concerned European States and that he should seek to include more examples from other regions in future reports. Although the first report was not intended to be exhaustive, it might be seen as underestimating non-European practice and case law. He was therefore grateful to colleagues who had brought valuable references to his attention.

29. As had been suggested by Sir Michael Wood, he intended to propose that the Commission request States to provide it with examples of relevant practice and case law and ask the Secretariat to undertake a study on the topic.

30. Turning to the scope of the topic, he said that many members had agreed that the question of international liability for injurious consequences arising out of acts not prohibited by international law should not be included in the topic. Some others had, however, expressed reservations in that regard, noting, for example, that rules and principles of liability could exist in customary and treaty law. In his view, at the current stage of work, the topic should be limited to rights and obligations arising from wrongful acts. That was, however, without prejudice to a possible study on succession of States in respect of consequences of lawful acts that the Commission might wish to take up at a later stage.

31. Almost all speakers had agreed that the scope of the topic should not include the question of succession in respect of the responsibility of international organizations. Some had noted, however, that work on the topic should refer also to situations where member States incurred responsibility in connection with acts done by international organizations *vis-à-vis* third parties. He agreed with both views. In fact, as indicated in the future programme of work, issues that might be addressed included issues of succession in respect of responsibility of States for wrongs caused to other actors, namely international organizations, and responsibility of member States in connection with acts of the organization.

32. He agreed with the many members who had considered that the question of succession of Governments should not be included in the topic. Changes of Governments, even changes of regimes, were different from State succession.

33. Some members had pointed out that the French and Spanish words used to translate the English term "responsibility" were problematic, inasmuch as they also denoted "liability". Any possible ambiguity in that regard could be avoided by making the title of the topic more explicit by referring to "internationally wrongful acts".

34. With regard to draft article 1, many members had indicated that, in the interests of clarity, it should specify that the scope of the topic concerned succession of States "in respect of rights and obligations arising from internationally wrongful acts". He would provide an amended proposal to that effect for consideration by the Drafting Committee.

35. Draft article 2 on use of terms seemed to be generally acceptable to members. However, a number of proposals had been made regarding the inclusion of further terms, such as "internationally wrongful acts", "devolution agreements", "unilateral declarations" and "other subjects of international law". As indicated in the report, definitions of other terms would be added in the course of future work, possibly including not only terms such as devolution agreements and unilateral declarations but also claims or other agreements. At the same time, it had been proposed that a definition of the term "international responsibility" not be included. He could agree to that proposal and instead explain in the commentary both the concept of State responsibility and the concept of internationally wrongful acts.

36. In view of concerns raised by Mr. Rajput about the definition of "succession of States", he wished to make clear that draft article 2 (*a*) served only for definitional purposes and that it did not take any position on the issue of legality. That was indeed a substantive issue, which he would address in the second report.

37. As to the general rule on State succession, some members had pointed out that the only exception to the rule of non-succession might occur when the successor State voluntarily agreed to assume the responsibility of the predecessor State or when it endorsed the latter's wrongful acts. Other members had underlined that there was insufficient State practice to reject the traditional rule of non-succession.

38. Many members had emphasized the need to define the general rule before sending draft articles 3 and 4 to the Drafting Committee. He did not agree with Mr. Murase, who had stated that those draft articles were essentially "without prejudice" clauses: they referred not only to

[406] The draft articles adopted by the Commission and the commentaries thereto are reproduced in *Yearbook … 2001,* vol. II (Part Two) and corrigendum, pp. 26 *et seq*., paras. 76–77. See also General Assembly resolution 56/83 of 12 December 2001, annex.

forms—agreements and unilateral acts—but also to substance, since they underlined the subsidiary nature of the draft articles.

39. Some members had underlined that, as currently formulated, draft articles 3 and 4 were not dependent on a resolution of the issue of whether there was a general principle guiding succession in respect of State responsibility. As had been noted by one member, those draft articles could apply to both non-succession and succession situations as a default rule. They would, of course, serve different purposes. He wished to make clear that in future reports he had no intention of replacing a general rule of non-succession with a general rule of succession. He did not believe there was automatic succession in all situations. Instead, future reports would propose a set of rules for different categories of succession. In the case of the default rule of non-succession, agreements and unilateral declarations could still provide for the transfer of certain rights and obligations. In the case of the possible rule of succession, agreements could provide both for limitation and for distribution of rights and obligations among several successor States, if appropriate.

40. In his view, it was useful to have such general provisions in draft articles 3 and 4 at the beginning of the draft because they avoided the need for repeated references to agreements and unilateral agreements in each succeeding draft article.

41. He fully agreed with those members who had noted the need for a stand-alone draft article underlying the subsidiary nature of the draft articles. It was in fact his intention in that connection to propose either a new draft article or a new introductory paragraph for draft article 3.

42. He also agreed with those members who had observed that draft article 4, paragraph 2, should more clearly refer to all the relevant conditions set out in the Commission's Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations.[407] Although it had been his intention to cover other conditions, in addition to the reference to "clear and specific terms", he could agree to replacing the general reference to rules of international law applicable to unilateral acts of States with more specific language.

43. Many members had expressed support for the future programme of work. In his view, the programme was, and should remain, flexible enough to accommodate new research and the results of debates in the Commission. As had been suggested by Ms. Escobar Hernández, certain questions could be addressed at an earlier stage than the fourth report.

44. The debate had shown that most speakers were in favour of sending the draft articles to the Drafting Committee, while some would prefer to refer only draft articles 1 and 2. Mr. Huang, Mr. Reinisch and Sir Michael Wood were against referral of the draft articles. His clear preference would be to send draft articles 1 and 2 to the Drafting Committee to enable it to start work on them that week. He also preferred to send draft articles 3 and 4 to the Committee but with the understanding that they would stay within the Drafting Committee until the following session, when members of the Commission would have a clearer picture of residual rules on non-succession and succession to be proposed in the second report.

45. Mr. REINISCH said that, as the Special Rapporteur had explicitly referred to the hesitation he had expressed with regard to sending the draft articles to the Drafting Committee, he wished to make clear that he would join the consensus, if one emerged, regarding the proposal made by the Special Rapporteur to keep draft articles 3 and 4 in particular within the Drafting Committee.

46. The CHAIRPERSON said that he took it that the Commission wished to refer draft articles 1 to 4 to the Drafting Committee, taking into account the comments and suggestions made in the plenary and with the understanding that draft articles 3 and 4 would stay within the Drafting Committee until the following session, when members of the Commission would have a clearer picture of residual rules on non-succession and succession to be proposed in the second report.

It was so decided.

Organization of the work of the session (*concluded*)

[Agenda item 1]

47. Mr. RAJPUT (Chairperson of the Drafting Committee) said that the Drafting Committee on the topic of succession of States in respect of State responsibility was composed of the following members: Mr. Šturma (Special Rapporteur), Ms. Escobar Hernández, Ms. Galvão Teles, Mr. Grossman Guiloff, Mr. Hmoud, Mr. Jalloh, Mr. Kolodkin, Ms. Lehto, Mr. Murase, Mr. Murphy, Mr. Nguyen, Mr. Park, Mr. Reinisch, Mr. Ruda Santolaria, Mr. Vázquez-Bermúdez, Sir Michael Wood and Mr. Aurescu (Rapporteur), *ex officio*.

The meeting rose at 4 p.m.

3382nd MEETING

Wednesday, 26 July 2017, at 10 a.m.

Chairperson: Mr. Georg NOLTE

Present: Mr. Argüello Gómez, Mr. Aurescu, Mr. Cissé, Ms. Escobar Hernández, Ms. Galvão Teles, Mr. Gómez Robledo, Mr. Grossman Guiloff, Mr. Hassouna, Mr. Hmoud, Mr. Kolodkin, Mr. Laraba, Ms. Lehto, Mr. Murase, Mr. Murphy, Mr. Nguyen, Ms. Oral, Mr. Ouazzani Chahdi, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Rajput, Mr. Reinisch, Mr. Ruda Santolaria, Mr. Saboia, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Sir Michael Wood.

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[407] The Guiding Principles adopted by the Commission and the commentaries thereto are reproduced in *Yearbook … 2006*, vol. II (Part Two), pp. 161 *et seq*., paras. 176–177.