

Document:-
A/CN.4/L.207

**Draft articles on State responsibility: texts adopted by the Drafting Committee - title of chap. II
and articles 7-9 - reproduced in A/CN.4/SR.1278**

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
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involved in the use of adjectives. For those reasons, he urged the adoption of a definition which followed the wording of the Vienna Convention without the proposed additions.

58. In paragraph 1 (*i*) of article 2, he supported the Special Rapporteur's suggestion that the Vienna Convention formula should be used. There was no reason to restrict the scope of the present draft articles to certain types of organization, as had been done in the draft on relations between States and international organizations; the two situations were completely different. The application of that other draft had been restricted to organizations of a universal character, but it dealt with problems involving a host State on the one hand and sending States on the other; the rules applicable in their case to such concrete and immediate problems as immunities could hardly be extended to regional organizations having different constituent instruments and customary rules. In view of the different situation dealt with in the present draft, the Special Rapporteur had been right to adhere to the definition in the Vienna Convention.

59. In paragraph 2 of article 2, he supported the reference to the "law peculiar to any international organization", which was an adequate adaptation of the Vienna Convention phraseology and a very useful expedient to avoid any reference to the "internal law" of an organization, which might give rise to legitimate doubts and misgivings.

60. As to article 6, in the debate at a previous session he had had occasion to explain his views on the problem of the treaty-making capacity of international organizations.¹² The Commission should avoid reopening a general debate on the sources of the treaty-making power of international organizations; that would involve it in a discussion of the problem of the personality of international organizations, which was at least *sui generis*, as some writers had recognized. The principle that had emerged from the debates, both in the Commission and in the Sixth Committee of the General Assembly, was that the capacity of international organizations to conclude treaties should be governed by their constituent instruments. That basic truth was, he believed, expressed in the text of article 6 now under discussion. The alternative text put forward by the Special Rapporteur in paragraph (20) of his commentary was more in the nature of an enunciation of principles than a provision of law. The meaning of the formula "acknowledged in principle by international law" was not clear. It was also difficult to see why a statement of that recognition should be included in the text of the article when the Special Rapporteur himself had acknowledged, in paragraph (5) of his commentary, that all international organizations did not have the "same capacity" to conclude treaties.

61. He therefore proposed that the article should be retained as it stood and that all the necessary explanations should be given in the commentary.

The meeting rose at 1.05 p.m.

1278th MEETING

Friday, 14 June 1974, at 10.15 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Yasseen.

State responsibility

(A/CN.4/264 and Add.1; A/9010/Rev.1; A/CN.4/L.207 and L.208)

[Item 3 of the agenda]

(resumed from the 1263rd meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Commission to consider the text of draft articles 7, 8 and 9 proposed by the Drafting Committee (A/CN.4/L.207).

ARTICLE 7¹

2. Mr. HAMBRO (Chairman of the Drafting Committee) said that before introducing article 7 he wished to make a brief observation on the title of the draft articles as a whole. At the previous session, the Commission had adopted the title: "Draft articles on State responsibility". It might now wish to amend that wording in order to follow the language of paragraph 3 (*b*) of General Assembly resolution 3071 (XXVIII), namely, "Draft articles on responsibility of States for internationally wrongful acts". The Drafting Committee had considered, however, that it would be premature for it to make a proposal to that effect at the present stage.

3. The title of chapter II, as adopted by the Commission at the previous session was: "The 'act of the State' according to international law". The Drafting Committee had observed that the expression "under international law" was used in several provisions of the draft, such as articles 3 and 5 (A/9010/Rev.1, chapter II, section B); for the sake of consistency, it had therefore replaced the words "according to international law" by the words "under international law". That change affected the English version only.

4. For article 7, the Drafting Committee proposed the following title and text:

Article 7

Attribution to the State of the conduct of other entities empowered to exercise elements of the governmental authority

1. The conduct of an organ of a territorial governmental entity within a State shall also be considered as an act of that State under international law, provided that organ was acting in that capacity in the case in question.

2. The conduct of an organ of an entity which is not a part of the formal structure of the State or of a territorial governmental entity,

¹² See *Yearbook ... 1973*, vol. I, p. 202, para. 38.

¹ For previous discussion see 1251st meeting, para. 14 and following meetings.

but which is empowered by the internal law of that State to exercise elements of the governmental authority, shall also be considered as an act of the State under international law, provided that organ was acting in that capacity in the case in question.

5. Articles 5 and 6 dealt with the attribution to the State of the conduct of its organs. Article 7, as submitted by the Drafting Committee, dealt with the attribution to the State of the conduct of organs of two types of entity which, under its internal law, were not organs of the State.

6. While the principle on which article 7 was based appeared to have been generally accepted by the members of the Commission, difficulties had arisen with regard to the drafting of the article and, in particular, to the terms used to designate the two types of entity with which it dealt. After thorough consideration, the Drafting Committee had adopted, with some modifications, the terminology suggested by Mr. Kearney.²

7. The Committee had also given effect to the Commission's decision that, for the sake of clarity, each type of entity should be dealt with in a separate paragraph.

8. Paragraph 1 of the article dealt with the conduct of an organ of "a territorial governmental entity within a State". The notion of an "entity" had been criticized by some members and alternative terms had been suggested. A better word might perhaps have been found in one or other of the working languages, but in the Committee's view, "entity" was the only term that was acceptable in all of them. The Committee had decided to delete the enumeration of the entities in question, which appeared in brackets in the text of article 7 proposed by the Special Rapporteur, since no such enumeration could possibly be exhaustive.

9. Paragraph 2 of article 7, as proposed by the Drafting Committee, dealt with the conduct of an organ of "an entity which is not part of the formal structure of the State or of a territorial governmental entity, but which is empowered by the internal law of that State to exercise elements of the governmental authority". That phrase delimited the scope of the paragraph by introducing three limitations. The first resulted from the difference between paragraph 2 of article 7 and article 5, and was indicated by the words "which is not part of the formal structure of the State". The second resulted from the difference between the two paragraphs of article 7 itself, and was indicated by the words "which is not a part... of a territorial governmental entity". The third resulted from the difference between those entities whose conduct was covered by paragraph 2 of article 7 and those whose conduct could not be attributed to the State; it was indicated by the words "which is empowered by the internal law of that State to exercise elements of the governmental authority". Those words corresponded to the adjective "public" appearing in the text submitted by the Special Rapporteur. The Committee had used that paraphrase because the term "public" had different meanings in different languages and legal systems. It should be noted that the paraphrase had not

been used in paragraph 1 because it was clear that the territorial governmental entities dealt with in that paragraph were always empowered to exercise elements of the governmental authority; the Committee suggested that that point should be made clear in the commentary.

10. Finally, he wished to explain why article 7, as submitted by the Drafting Committee, contained no reference to contracts—a question which had been raised during the first reading of the article. The Committee had considered that if there was a rule of international law imposing upon a State the duty to ensure the observance of a particular contract, the international responsibility of the State in case of non-observance of the contract would result from the breach of the rule in question and not from the contract *per se*. If there was no such rule, the non-observance of the contract would not engage the responsibility of the State. The Commission might wish to include that explanation in the commentary to article 7.

11. Mr. YASSEEN said that the new wording for article 7 had a number of advantages over the text proposed by the Special Rapporteur. Division into two paragraphs made the text clearer. The enumeration of examples, which might have been regarded as exhaustive, had wisely been dropped. Lastly, the words "*habilitation ... à exercer des prérogatives de la puissance publique*" exactly conveyed the meaning which the Commission had intended to give in French to the adjective "*publique*", for which there was no exact equivalent in certain systems of law other than those of continental Europe. He therefore approved of the proposed new wording.

12. Mr. TSURUOKA congratulated the Drafting Committee on its work, which had resulted in considerable improvements, especially in paragraph 2 of the article. The article established clearly, on the basis of two criteria, the relationship that must exist between the State and the author of the act complained of. That clarification should make article 7 easier to apply.

13. The CHAIRMAN said that if there were no further comments he would take it that the Commission agreed to approve article 7 provisionally, in the form proposed by the Drafting Committee.

It was so agreed.

ARTICLE 8³

14. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 8:

Article 8

Attribution to the State of the conduct of persons acting in fact on behalf of the State

The conduct of a person or group of persons shall also be considered as an act of the State under international law if

(a) it is established that such person or group of persons was in fact acting on behalf of that State; or

(b) such person or group of persons was in fact exercising elements

² Sec 1258th meeting, para. 11.

³ For previous discussion see 1258th meeting, para. 1.

of the governmental authority in the absence of the official authorities and in circumstances which justified the exercise of those elements of authority.

15. Article 8 dealt with the action of private persons. It concerned the attribution to the State of the conduct not of organs, as in the three preceding articles, but of private persons or groups of persons. From the discussion in the Commission and in the Drafting Committee it had become clear that article 8, as originally submitted by the Special Rapporteur, sought to cover two distinct situations, each of which was now the subject of a separate sub-paragraph.

16. The first, dealt with in sub-paragraph (a), was the situation in which, although official authorities of the State were available, a particular action was carried out on behalf of the State, not by those authorities, but by a person or group of persons. It was indispensable in such a case to establish that the person or group of persons in question had in fact been acting on behalf of the State. That condition was expressly set out in the text of the article.

17. The second situation, dealt with in sub-paragraph (b), was that in which a person or group of persons exercised elements of the governmental authority because no official authorities were available. Such a situation occurred when, for instance, a natural disaster, hostilities or other exceptional circumstances caused the disappearance of the official authorities in a particular area of a State.

18. The CHAIRMAN said that in the absence of any comments he would take it that the Commission agreed to approve article 8 provisionally, in the form proposed by the Drafting Committee.

It was so agreed.

ARTICLE 9⁴

19. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 9:

Article 9

Attribution to the State of the conduct of organs placed at its disposal by another State or by an international organization

The conduct of an organ of another State or of an international organization which has been placed at the disposal of a State shall be considered as an act of the latter State under international law, if that organ was acting in the exercise of elements of the governmental authority of the State at whose disposal it has been placed.

20. Article 9 dealt with a problem which had created some difficulty in the Commission and had been discussed at length in the Drafting Committee: the problem of the attribution to a State of the conduct of an organ placed at its disposal by another State or by an international organization. The text submitted by the Drafting Committee provided for two important limitations to the rule.

21. In the first place, the article applied only if the organ "was acting in the exercise of elements of the

governmental authority of the State at whose disposal it has been placed". That clause, which echoed a similar clause in sub-paragraph (b) of article 8, eliminated all such situations as the secondment of technicians, advisers and experts, who all acted in a personal capacity.

22. The second limitation resulted from the use of the expression "placed at the disposal of a State". That expression excluded from the scope of the article all cases in which the organ in question acted on the authority and instructions of the State to which it belonged. Article 9 applied only to cases in which the organ lent acted on the authority and instructions of the State in which it acted; that point had been extensively discussed in the Drafting Committee.

23. In particular, the article did not apply—and that point would have to be made very clear in the commentary—to the armed forces of a State sent for military purposes to the territory of another State with its agreement; that was to say, to the action of military forces for military purposes.

24. The situation was different, however, when a State sent its armed forces to the territory of another State for civilian purposes, for example, to lend assistance after a natural disaster. In such cases, it might well happen that the State to which the armed forces belonged actually placed them at the disposal of the other State, under whose authority they would operate. Article 9 would then apply. An example, drawn from the practice of the League of Nations, was the sending of military contingents to the Saar territory by a number of countries to supervise the plebiscite of 13 January 1935. Those contingents had acted as ordinary civilian police.

25. Lastly, he drew attention to the redraft of article 9 proposed by Mr. Ushakov (A/CN.4/L.208) as an alternative to the Drafting Committee's proposal.

26. Mr. AGO (Special Rapporteur) said that the reason why the article could be considered as not applying to cases in which a State placed military organs at the disposal of another State to be used for military purposes was that usually such cases were not genuine loans of organs, so that they did not fall within the scope of the article. In such cases the organs usually continued to act on behalf of the State to which they belonged and in accordance with its instructions. It was important to give that explanation in the commentary.

27. He preferred the original wording of article 9, in which the introductory phrase corresponded to that used in the preceding articles, to Mr. Ushakov's text (A/CN.4/L.208). But if Mr. Ushakov's proposal would facilitate the adoption of the article, he would not oppose it.

28. Mr. USHAKOV said that his proposal related only to the form of article 9. Its purpose was to replace the words "The conduct of an organ of another State" by the words "the conduct of that organ", and that had entailed recasting the whole article. Once an organ of another State or of an international organization had been placed at the disposal of a State, the conduct in question was not necessarily that of "an organ of another State", but perhaps already that of an organ of the State at whose disposal the organ was.

⁴ For previous discussion see 1260th meeting, para. 35.

29. Mr. TSURUOKA said he hoped the commentary would explain in detail that the article in question did not apply to military organs in the territory of another State, so long as they were pursuing military objectives. It should be indicated why armed forces could not be placed under the control of another State. Was it because of their very nature, or did the matter depend on the interpretation of treaties of alliance? What were the reasons which made it impossible for a foreign army to be subject to the country where the internationally wrongful act had taken place? Those were questions of undoubted practical importance.

30. Mr. AGO (Special Rapporteur) said that he would provide a clear explanation in the commentary. In theory, it was not impossible that a military organ might be genuinely placed at the disposal of another State, even to perform military duties. But such cases were extremely rare. Where there was a treaty of alliance, armed forces sent to another State continued to be organs of the State to which they belonged and acted under its authority and control.

31. Mr. RAMANGASOAVINA said he preferred the Drafting Committee's text, but pointed out that the Commission was not bound to conform to any set pattern in the wording of the articles. Mr. Ushakov's text had the merit of being clear, but its opening words might give the impression that it referred rather to cases in which a State or an international organization placed one of its organs at the disposal of another State on its own initiative. The Drafting Committee's text, on the other hand, covered both that case and the case in which the organ was placed at the disposal of the beneficiary State at its request.

32. Mr. USHAKOV said that he was prepared to withdraw his proposal, which related only to drafting.

33. Mr. KEARNEY said he wished to emphasize, for the record, that article 9 did not deal with the question of the possible responsibility of the State whose organ had been placed at the disposal of another State, or with the question whether that responsibility would be joint or several.

34. Mr. AGO (Special Rapporteur) said that that point would be dealt with as fully as necessary in the commentary. It was better not to mention it in the text of the article itself, since it referred only to the quite exceptional case in which a State was held responsible for the act of an organ placed at its disposal by another State.

35. Mr. BILGE said that if the use of the expression "*prérogatives de la puissance publique*" (elements of the governmental authority) was intended to restrict the idea of "*fonctions publiques*", he would be obliged to reserve his position on the article.

36. Mr. AGO (Special Rapporteur) said that that expression was used solely to avoid translation difficulties and had no restrictive effect. It was clearly understood that a mayor or a policeman exercised "*prérogatives de la puissance publique*". That would be explained in the commentary.

37. Mr. BILGE said that in the light of the Special Rapporteur's explanations he withdrew his reservation.

38. Mr. AGO (Special Rapporteur) suggested that the beginning of the Drafting Committee's text should be combined with the beginning of Mr. Ushakov's text so as to read:

The conduct of an organ which has been placed at the disposal of a State by another State or by an international organization shall be considered as an act of the former State under international law. . .

39. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to approve article 9 provisionally, in the form submitted by the Drafting Committee, with the change proposed by the Special Rapporteur. The text would read:

The conduct of an organ which has been placed at the disposal of a State by another State or by an international organization shall be considered as an act of the former State under international law, if that organ was acting in the exercise of elements of the governmental authority of the State at whose disposal it has been placed.

It was so agreed.

Tenth session of the Seminar on International Law

40. The CHAIRMAN invited Mr. Raton, Senior Legal Officer in charge of the Seminar on International Law, to address the Commission.

41. Mr. RATON (Secretariat) said that the tenth session—the "Milan Bartoš" session—of the Seminar on International Law ended that day, and he wished to thank all the members of the Commission for their participation in the programme. The Seminar did not consist only of a series of lectures by voluntary speakers; it also covered the work and the discussions of the Commission.

42. In ten years, there had been nearly 250 participants in the Seminar, some of whom now held important post. They included a Minister for Foreign Affairs, a member of the United Nations Administrative Tribunal, heads of delegations to the United Nations or to other international organizations, and many representatives in the Sixth Committee of the General Assembly and at international conferences. The Seminar thus performed a very useful function, which would be impossible without the support it received from the members of the Commission; he thanked them most warmly, both personally and on behalf of the participants in the Seminar.

Co-operation with other bodies

[Item 10 of the agenda]

(resumed from the 1271st meeting)

STATEMENT BY THE OBSERVER FOR THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

43. The CHAIRMAN welcomed the observer for the Asian-African Legal Consultative Committee and invited him to address the Commission.

44. Mr. NISHIMURA (Observer for the Asian-African Legal Consultative Committee) said that having been unable, to his great regret, to attend the meeting

commemorating the Commission's twenty-fifth anniversary, he now wished to express his Committee's profound admiration for the work the Commission had accomplished during the past twenty-five years. It was a matter for gratification that in spite of the meticulous care and thought the Commission devoted to the drafting of each article, it had been able to complete its recommendations on as many as eighteen different topics, some of which had had a tremendous impact on the development of international law and had received general acceptance by the world community through their incorporation in multilateral conventions. In that connexion, the Commission's work on the law of the sea, diplomatic intercourse and immunities, consular relations and the law of treaties deserved special mention, for without its efforts, successful codification of the law on those important topics would surely have been impossible.

45. It gave him particular satisfaction that the Commission had shown its willingness not only to co-operate with various regional bodies, but also to take their work into account. The Asian-African Committee was particularly pleased by the close links which had existed from the first between it and the Commission. It had been a particular privilege for him to welcome Mr. Castañeda, the Chairman of the Commission, at the Committee's fifteenth session, held at Tokyo in January 1974. Such exchanges between the Commission and the Committee had always been extremely fruitful; he sincerely hoped that they would not only be maintained, but would be further strengthened in the years to come.

46. Turning to the work of the Committee, he said that the increase in its membership, which had now risen to twenty-six, the requests of its member Governments for assistance in various legal fields, and the general desire to use it as a forum for Asian-African co-operation in legal matters, had confronted the Committee with much heavier responsibilities during the past four years. For example, the Committee's secretariat had been engaged in collecting and analysing various data with a view to assisting its member Governments to prepare for the Third United Nations Conference on the Law of the Sea. Four of the regular sessions of the Committee, as well as several sub-committee meetings, had been devoted to exchanges of views on that subject. At the last session, Mr. Tabibi had submitted a statement of principle on behalf of the landlocked countries, in preparation for the conference at Caracas. But although a good deal of the Committee's time had been devoted to the law of the sea, it had not neglected other subjects studied by the the Commission, such as State succession and State responsibility, which were of great importance to many new States. The Committee was also closely following the studies made by other United Nations organs and bodies, such as the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Commission on International Trade Law (UNCITRAL), on legal matters of common interest; it had devoted considerable time to an exchange of views on the role of foreign office legal advisers; and it was also interested in the non-navigational uses of international watercourses—a subject

which presented great problems for the countries of Asia and Africa.

47. On behalf of the Asian-African Legal Consultative Committee, he extended an invitation to the Chairman of the International Law Commission to attend the Committee's next session, which was to be held at Teheran in 1975.

48. The CHAIRMAN thanked the observer for the Asian-African Legal Consultative Committee for his statement.

49. Mr. YASSEEN said that in Mr. Nishimura he was glad to welcome a distinguished internationalist and a friend of long standing. He emphasized the importance of the close co-operation that existed between the Committee and the Commission; the Committee's activities helped the members of the Commission in their codification work and enabled them to become acquainted with the attitude of African and Asian countries concerning a number of difficult problems. The Committee, for its part, collaborated closely with the Commission, studying its work in depth and seeking to formulate a common approach by the Asian and African countries to the various problems examined by the Commission in its codification activities.

50. He had had the honour to participate in the Committee's work on several occasions and in various capacities. He had represented the Commission, as its Chairman, at the session which the Committee had held in Thailand and he had also been present at its session at New Delhi; he had been Vice-Chairman at the session which the Committee had held at Lagos; and he had presided over three consecutive sessions of the Sub-Committee it had set up to examine the difficult question of the law of the sea. Hence he spoke of the Committee with full personal knowledge. He had greatly appreciated Mr. Nishimura's participation in all the sessions he had attended and had admired his devotion to the cause of international justice and his concern to arrive at common solutions which served that cause. He must also mention with admiration the contribution of Mr. Sen, the Secretary-General of the Asian-African Legal Consultative Committee.

51. Mr. EL-ERIAN said he was glad that the Asian-African Legal Consultative Committee was represented by such an eminent Japanese diplomat and jurist as Mr. Nishimura.

52. Referring to the Committee's work during the past two years, he said he was particularly interested in the exchange of views it had organized on the role of foreign office legal advisers. It was those legal advisers who bore the heavy burden of preparing draft treaties and, in his opinion, it was of the greatest importance that their role should be strengthened, especially in Asia, Africa and Latin America.

53. Also of vital importance was the work being done by the Committee in collecting and analysing data to aid Governments in preparing for the Third United Nations Conference on the Law of the Sea, a subject which greatly affected the interests of newly independent States.

54. Lastly, it was gratifying to hear that the Committee, in spite of its many other commitments, was still giving priority to the subject of State succession, that it proposed to resume its consideration of State responsibility and that it intended to take up the question of the non-navigational uses of international watercourses.

55. Mr. MARTÍNEZ MORENO, speaking on behalf of the American members of the Commission, welcomed Mr. Nishimura as a very distinguished jurist, and paid a tribute to the outstanding work done by his Committee in promoting the codification and progressive development of international law.

56. The interest of the Latin American countries in the Committee's work was reflected in the increasing attendance at its meetings of Latin American observers, including Mr. Castañeda, who had been present at its last session, at Tokyo.

57. He noted with great satisfaction that many of the subjects being studied by the Committee were also on the Commission's agenda and, in particular, that the Committee was making a real effort to help the new countries of Asia and Africa to defend their newly won freedom and to work for a better world under the rule of law.

58. Mr. BILGE thanked the President of the Asian-African Legal Consultative Committee for his account of the Committee's work. The topics considered by the Committee were very important—in particular, it had done extremely useful work on the role of legal advisers—and were of great interest to the Commission. As Mr. Nishimura had said, the Committee showed the closest interest in the Commission's work, and that interest was certainly reciprocated. The exchanges of views which took place between the Commission and the Committee were very valuable and should be followed up by exchanges of documents, which would give the Commission a more complete idea of the Committee's work. The Committee and the Commission not only did parallel work, but also had a common aim: the building of the international legal order, which was a prerequisite for the welfare of the entire international community.

59. Mr. RAMANGASOAVINA said that the members of the Commission were happy and proud to welcome the President of the Asian-African Legal Consultative Committee. The very interesting statement he had made showed similarity of the subjects which attracted the interest of all those concerned with the progressive development of international law. The subjects studied by the Committee were of great topical interest; on the eve of the opening of the Caracas conference it was right to draw attention to the importance of questions concerning the sea and shipping. Those questions were of particular interest to young countries; for it was partly due to the deterioration in the terms of trade that the countries of the third world, whose voices had been heard at the special session of the General Assembly on raw materials, were underprivileged and faced with very difficult international trade problems. In examining those problems, the Committee was thus studying matters of vital interest to young countries.

60. He appreciated the fact that the Committee had sent Mr. Nishimura to the Commission as its observer, not only because he was the President of the Committee, but also because he represented a country which was an example to the nations of the third world. For Japan would probably be among the developing countries had it not been for its extraordinary courage and enormous development drive, which had raised it to the level of the leading economic Powers. He was therefore especially appreciative of the assurances which Mr. Nishimura had given the Commission. The exchanges which took place between the Committee and the Commission were extremely fruitful for the development of international law and should be continued.

61. Mr. QUENTIN-BAXTER, speaking also on behalf of Mr. Hambro, Mr. Kearney and Sir Francis Vallat, said he was grateful to Mr. Nishimura for being prepared to spend a significant amount of his time at the Commission's present session.

62. The geographic area covered by the Committee was so immense, and characterized by so many rich and varied cultures and legal inheritances, that the Committee had a valuable contribution to make to the discussions not only of the Commission, but also of the General Assembly and the Sixth Committee. The Committee and the Commission could help each other in the pursuit of their common aim, and he was gratified that the Committee had devoted so much time to the study of problems which were on the Commission's agenda. He was especially interested in the Committee's work on the role of foreign office legal advisers; members of the Commission knew only too well how the ratification of multilateral treaties could often be delayed by a lack of skilled personnel in government service.

63. Mr. USHAKOV thanked Mr. Nishimura for his statement. He noted that both the importance of the work of the Asian-African Legal Consultative Committee and the number of questions it studied continued to increase. He had attended its session in January 1970 as observer for the International Law Commission, of which he had been Chairman, and had been much impressed by the range of the Committee's work and the high level of the participants. The Committee had then had fourteen African and Asian members and three associate members; its membership had since increased, which showed the growing importance of its role. International lawyers of the Soviet Union were greatly interested in the Committee's work; Mr. Movchan, for example, the former Director of the United Nations Codification Division, had attended the Committee's 1974 session.

64. He welcomed the close links that had been forged between the Commission and the Committee. He hoped they would become even closer and wished the Committee success in its work.

65. Mr. TABIBI thanked the observer for the Asian-African Legal Consultative Committee for his concise and comprehensive report on the Committee's work. He himself had participated in its last session, at Tokyo, where he had served as Chairman of its Committee on Landlocked Countries, making preparations for the Caracas conference on the law of the sea. Much of the

success of that session had been due to the untiring efforts of the Committee's President, Mr. Nishimura, who had been a distinguished jurist since the time of the League of Nations and one of the chief architects of his country's peace treaty.

66. He (Mr. Tabibi) had attended many sessions of the Committee and had always admired the interest shown by its members in promoting international law and in developing co-operation with the rest of the world in an atmosphere of mutual understanding. Since half the Members of the United Nations were Asian and African States with a rich historical, legal and cultural heritage, the Commission could benefit greatly by the Committee's experience. He also wished to pay a tribute to the Committee's secretariat, which not only provided practical advice to the Governments of member States, but also carried out studies in which the Commission itself was interested. For example, it had contributed to the success of the United Nations Conference on the Law of Treaties and was now preparing for the conference at Caracas. There were also some subjects in which the Committee was in advance of the Commission, such as the non-navigational uses of international watercourses.

67. He wished to express his thanks to Mr. Nishimura and to Mr. Sen, the Committee's Secretary-General, for the hospitality extended to him during the Tokyo session.

68. Mr. ŠAHOVIĆ said he had listened with great interest to Mr. Nishimura's statement on the work of the Asian-African Legal Consultative Committee. That statement had given the Commission an insight into the activities of African and Asian lawyers in the field of international law, and had shown that the major concerns of African and Asian countries in that sphere were those of the international community in general and of the United Nations in particular.

69. Yugoslavia had always attached very great importance to the Committee's proceedings and had consistently found new horizons for the development of international law in its reports. As a member of the Sub-Committee on the Law of Non-Navigational Uses of International Watercourses,⁵ he was at present studying the reports of the Asian-African Legal Consultative Committee, which he found indispensable for the current development of international law. He wished the Committee every success in its future work.

70. Mr. TSURUOKA, after congratulating Mr. Nishimura on his statement, said that, as Director of United Nations Affairs in the Japanese Ministry of Foreign Affairs, he had participated in the establishment of the Asian-African Legal Consultative Committee. Co-operation between the Committee and the Commission had proved very fruitful, because of the similarity of the topics studied by the two bodies and the close relations they maintained. The Commission often drew inspiration from the results of the Committee's deliberations and the Committee, in turn, kept its members informed of what the Commission had done. Mr. Nishimura had

made a great contribution to the progress of the Asian-African Legal Consultative Committee and he hoped that the links between the Committee and the Commission would be further strengthened.

71. The CHAIRMAN, speaking as a member of the Commission, thanked the observer for the Asian-African Legal Consultative Committee for his excellent account of the Committee's work. He himself attached very great importance to co-operation between the Commission and regional bodies working in the legal field.

72. The Committee was distinguished from other regional bodies by the fact that, under its Statute, one of its tasks was to study and comment on the drafts prepared by the International Law Commission. Conversely, the Committee's own ideas were of great importance to the Commission, which was attempting to draft legislation of universal scope and therefore needed to familiarize itself with the thinking of the new countries of Asia and Africa. The Committee undoubtedly had an important role to play in promoting the progressive development of international law throughout the world, and it was useful for its views to be available to the Commission at as early a stage as possible.

73. He thanked the observer for the Asian-African Legal Consultative Committee for his kind invitation to attend the Committee's session at Teheran, which he would be very glad to accept if his commitments so permitted.

The meeting rose at 1 p.m.

1279th MEETING

Monday, 17 June 1974, at 3.10 p.m.

Chairman: Mr. Endre USTOR

Present: Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of treaties

(A/CN.4/275 and Add. 1 and 2; A/CN.4/278 and Add. 1-5; A/8710/Rev. 1)

[Item 4 of the agenda]

(resumed from the 1273rd meeting)

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 19

1. The CHAIRMAN invited the Special Rapporteur to introduce article 19, which read:

⁵ See 1256th meeting, para. 1.