Document:-

A/CN.4/SR.1159

Summary record of the 1159th meeting

Topic:

Succession of States with respect to treaties

Extract from the Yearbook of the International Law Commission:-

1972, vol. I

1159th MEETING

Tuesday, 16 May 1972, at 10.15 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Badjaoui, Mr. Bilge, Mr. Castañeda, Mr. Hambro, Mr. Nagendra Singh, Mr. Quentin-Baxter, Mr. Rossides, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Succession of States in respect of treaties

(A/CN.4/202; A/CN.4/214 and Add.1 and 2; A/CN.4/224 and Add.1; A/CN.4/249; A/CN.4/256)

[Item 1 (*a*) of the agenda]

(resumed from the previous meeting)

ARTICLE 2 (Area of territory passing from one State to another) *(continued)* [1]

1. The CHAIRMAN invited the Commission to resume consideration of draft article 2 (A/CN.4/214).

2. Mr. BEDJAOUI said that article 2, which concerned the incorporation of a territory in an existing State, called for a number of comments. With regard to subparagraph (*a*), it was not certain that the fundamental principle of the law of treaties which it stated—the "moving treaty frontiers" principle—was entirely established in State succession. For in cases of incorporation the successor State often had recourse, where the incorporated territory was concerned, to the principle of separate treatment by internal law or treaty; in other words it preferred, for political or other reasons, to retain the particularity of the territory incorporated and not to extend to it automatically its own laws and regulations and the treaties by which it was bound. That applied not only to colonial situations, but also to incorporation by plebiscite or reincorporation, as in the case of Alsace-Lorraine. He wondered whether the Special Rapporteur had considered that aspect of the question.

3. With regard to the opening phrase, "When an area of territory, which is not itself organized as a State possessing treaty-making competence", he would remind the Commission that the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, whose work had been endorsed by the General Assembly on its completion in 1970, had declared that the territory of a colony or other non-self-governing territory had a status separate and distinct from the territory of the State administering it and retained such separate and distinct status until the people of the colony or non-self-governing territory had exercised their right of self-determination.[2] So at least the drafting should be reconsidered in order to avoid any conflict with principles which had been adopted by the Special Committee after long discussion and enjoyed universal support.

4. The expression "an area of territory" was not appropriate; as the commentary confirmed, it was not an area of territory that was referred to but an entire territory, or even a former State, such as Madagascar. A more general wording should therefore be found.

5. Lastly, the meaning of the expression "date of the succession" should be more precisely defined. It was a very complex problem, to which he himself had devoted an article in the draft on the topic for which he was Special Rapporteur.

6. Mr. ALCÍVAR said that article 2 caused him a good deal of difficulty, part of which was due to the unsatisfactory Spanish rendering of the English term, the "moving treaty frontiers" rule.

7. As the Special Rapporteur had already said, the origin of the article was to be found in article 29 of the Vienna Convention on the Law of Treaties.[3] Mr. Tabibi had pointed out that the interpretation of the territorial scope of treaties was different in Asia from what it was in Africa, and he himself felt compelled to add that it was even more different in Latin America, where the concept of territorial sovereignty had been determined by the principle of *uti possidetis juris* introduced in Spanish America to fix the boundaries of the new Spanish American States born after the achievement of independence.

8. Consequently, it was essential to make it clear that article 2 referred to the lawful transfer between States of sovereignty exercised over a particular territory, especially as the Drafting Committee at the United Nations Conference on the Law of Treaties had interpreted the *pacta sunt servanda* rule a little vaguely.

9. He would find it difficult to accept an article relating to the "moving treaty frontiers" rule unless it clearly brought out that the transfer of territory in question must be lawful and valid.

10. Sir Humphrey WALDOCK (Special Rapporteur), summing up the discussion, said that although article 2 was an expression of the same principle as was stated in article 29 of the Vienna Convention, it should be realized that it was also a principle which had been accepted generally and for a long time in connexion with matters of State succession. In setting out the principle, he had perhaps resorted to somewhat formalistic drafting in order not to prejudge other cases of State succession. For example, in using the words "When an area of territory, which is not itself organized as a State possessing treaty-making competence", he had intended to be as neutral as possible, in order to cover such cases as those of former colonies or trusteeships, or of a combination of both, such as that between Northern Cameroon and Nigeria.

---

[1] For text see previous meeting, para. 19.

[2] See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 18*, p. 69.

[3] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 293.

11. It had not been his intention to imply that the rule, as such, was subject to many exceptions. What he had meant to say was that the principle that treaties should apply to the territory of a State as a whole was a general rule which would prevail, but that particular cases of succession gave rise to a number of situations in which the rule might have to give way to the particular requirements of the situation.

12. He could understand those who might wish to place article 2 in some other part of the draft, but he could not agree with those who proposed to link it up with the problems of the fusion or federation of States, which was an entirely different matter. He would prefer, therefore, that the Commission should leave it as an independent principle and decide later how it might be more precisely formulated in the draft as a whole.

13. He could not agree with Mr. Tammes that it was necessary to introduce into article 2 the question of the extinction of a State. Article 2 had been designed to cover the case in which an area of territory was added to a State in accordance with the "moving treaty frontiers" rule. The question, which had been referred to by a number of speakers, of the process by which that territorial addition was effected was politically important, but he had started from the assumption that when the Commission spoke of territory passing from one State to another, it would be referring only to lawful transactions and not to any possible cases of forcible annexation.

14. Mr. Kearney had said that the question of the lawfulness of the transfer which might be left to the future diplomatic conference. He himself believed that, once the concept of legality was introduced into the draft, it would be necessary to include it in other articles as well. For that reason he had referred to territory as "passing" under the sovereignty of an already existing State, since that was a neutral expression which could cover a number of different methods of transfer.

15. Mr. Ushakov had suggested the wording "passes by mutual agreement", but then the question arose by whom the agreement should be made. The territory in question might, indeed, have its own local authorities and its inhabitants might be consulted, but that was a situation which would be difficult to cover in the draft.

16. Reverting to Mr. Tammes' hypothesis of the extinction of a State, he thought that article 62, paragraph 1 (*b*), of the Vienna Convention, on fundamental change of circumstances, should not be considered as embracing and sufficiently covering cases of State succession. As Mr. Tammes had pointed out, that provision was formulated in extremely strict terms. He himself would be among the first to argue that the law of State succession in respect of treaties should be formulated within the general framework of the Vienna Convention, but at the same time he would insist that account had to be taken of the impact of the different categories of succession on the rules of the law of treaties. In other words, it was necessary first to approach the problem from the angle of the different cases of State succession, and then from that of their impact on the law of treaties.

17. Mr. Ago had raised some questions about the exception in sub-paragraph (*a*). He himself considered that exception necessary, because there were cases in which the "moving treaty frontiers" rule could not apply.

18. Mr. Ago had also suggested that account should be taken of treaties involving no territorial obligations, such as those relating to military alliances and the like; but he himself had always believed that any treaty, including broad political treaties with no special territorial connotations, involved obligations comprehending the whole of the State's territory. That problem, however, could perhaps best be dealt with in the Drafting Committee.

19. Mr. Quentin-Baxter, referring to sub-paragraph (*b*), had suggested that it might be necessary in that context, and possibly elsewhere, to include some article which would release predecessor States from their treaty obligations. He himself would be inclined to take such a release for granted, but consideration might be given to the possible need for some such general article.

20. Mr. Bedjaoui had raised the question of the relationship between State succession in respect of treaties and internal law. Undoubtedly, there were many cases in which treaties not only existed on the international plane, but were also a part of internal law; but he feared that the Commission would inevitably involve itself in difficulties if it did not regard the question of external relations as one which was largely autonomous. In his view, internal law was a factor of very minor importance for the validity of treaties.

21. He agreed with Mr. Bedjaoui, however, that the Commission should be careful not to draft anything which would be in conflict with the General Assembly's attitude to the status of colonies before they had gained independence.

22. Mr. AGO said he understood that the Special Rapporteur had drafted article 2 with cases of the cession or partial transfer of territory from one State to another in view, excluding cases of total absorption, which would be dealt with separately; so he would not go into that question for the moment.

23. The Commission might be doing a disservice to the cause which Mr. Alcívar wished to uphold if it introduced into the draft articles the notion of the lawfulness or validity of transfers of territory. It was obvious that the Commission must necessarily postulate the lawfulness of the transfers it referred to. If it was considered necessary to specify that only "lawful" transfers were meant, logic would require the Commission to go further and also specify that it was speaking of States "whose existence was lawful under international law", though that was also implied. There was no reason why all that should not be explained in the commentary, but to state it in the text of the draft articles would open the way to many dangers of interpretation.

24. He agreed with the Special Rapporteur that it would be inadvisable to speak of transfers of territory made by mutual agreement. In some cases transfers were not based on an agreement; for instance, after the Second World War some transfers of territory, the validity of which was not now contested, had taken place without any mutual agreement. It would therefore be better not to reopen questions which should not be reopened and to

accept as self-evident that the rules the Commission was drafting applied only to lawful transfers.

25. With regard to the application of treaties of the successor State to a territory which had passed under its sovereignty, it seemed to him to be obvious that there would be no sense in saying that such treaties "become applicable in respect of that area" if the treaties had no territorial application. What the article meant was that in case of cession, the treaties of the transferee State were binding on it with respect to the whole territory, including the area ceded. The drafting of sub-paragraph (*a*) therefore needed some revision.

26. It was true, as Mr. Bedjaoui had said, that the principle of separate treatment by internal law or treaty could be invoked in certain cases. For example, in the case of an establishment treaty authorizing the nationals of one State to carry on certain activities in the territory of another State, the latter State might not be willing to apply the treaty to a newly-acquired province, and it should be considered whether the extension of the treaty régime ought really to be made mandatory in such cases.

27. It was also true, as Mr. Bedjaoui had said, that a State which had acquired a new area of territory might deem it advisable to leave in force not only its internal laws, but also the agreements concluded with a third State; but then the consent of the third State was also essential. In that case, even if the impression given was that the former agreement continued to apply, there was really a new agreement reproducing the provisions of the old one and specifying that they still produced their effects in the newly annexed territory. That was a matter which should be explained in the commentary, but it did not change the rule stated in article 2.

28. Mr. USHAKOV said he could not agree with the Special Rapporteur that there were hardly any exceptions to the principle stated in article 2. The possibility that exceptions existed was mentioned in the commentary and Mr. Ago had cited some. The question therefore remained open, and it would be advisable to include, after a general article, a few articles dealing with possible exceptions.

29. Mr. CASTAÑEDA said that in his opinion it was not enough to assume that any transfers of territory referred to by the Commission in its draft articles would be lawful transfers; that should be stated expressly in the text itself, possibly in the form of a general reservation.

30. In recent years international law had changed markedly in its attitude towards territorial acquisitions; no less an authority than the General Assembly had come out strongly in support of the duty of States not to recognize acquisitions by conquest. The title of article 2 might perhaps be amended to read: "Area of territory passing lawfully from one State to another".

31. Mr. YASSEEN said that the substance of the question under discussion was not controversial; all the members of the Commission agreed that only lawful transfers could be covered by the article. The question was whether that should or should not be stated expressly. Personally he thought it should not be, because if it were, the Commission would continually have to be considering whether or not the point should be stressed, and any cases it passed over in silence might give rise to problems of interpretation.

32. The CHAIRMAN said that the problem seemed to be basically a matter of drafting.

33. Mr. ALCÍVAR said he fully supported the position taken by Mr. Castañeda, which he hoped the Drafting Committee would take into consideration.

34. Mr. ROSSIDES said he agreed with Mr. Yasseen that, in theory, it could fairly be assumed that the Commission, as a United Nations body working in the spirit of the Charter, would never sanction any but lawful transfers of territory. In the world today, however, not only theory, but harsh reality had to be taken into account; the concept of "lawful" acquisition was unfortunately not always respected and there were cases of proposed or attempted territorial annexation which almost took the form of legality. He agreed with Mr. Castañeda, therefore, on the need to include some general reservation on the lawfulness of transfers of territory.

35. Mr. BEDJAOUI said that his position with regard to the lawfulness of territorial transfers was well known, and as he had to tackle the problem himself in the draft articles for which he was Special Rapporteur, he had proposed a preliminary article intended to solve it.[4] The discussion was not concerned with the substance. Nobody disputed the fact that the Commission's work was based on the assumption of respect for the principles of the Charter and of the lawfulness of the situations it covered.

36. The question was therefore one for the Drafting Committee, and the way it approached article 2 would determine the further progress of the Special Rapporteur's work and his own, and indeed that of the other Special Rapporteurs. He would suggest, therefore, that in order to solve all such problems at a stroke a general formula be devised, which might serve as a kind of preface to all the draft articles on the succession of States, specifying that the whole approach to the topic of State succession was based on respect for the principles of the Charter concerning the acquisition of territory.

37. Sir Humphrey WALDOCK (Special Rapporteur) said that, while he fully appreciated the concern of members about the lawfulness of territorial transfers, he agreed with Mr. Yasseen and Mr. Ago that it would be incorrect, both from a drafting and from a psychological point of view, to insert the work "lawful" in an article such as article 2. The point raised was undoubtedly a valid one; if it should be thought necessary to cover it, it would be possible to do so, as in the Vienna Convention on the Law of Treaties, by means of a general reservation.

38. Mr. BARTOŠ said he agreed with Mr. Rossides that, in order to take account of reality, it would be advisable to state once, but at the appropriate place in the draft, that the Commission was referring solely to lawful situations in conformity with the Charter. That might perhaps be done in an introductory article, as the Special Rapporteur had suggested.

---

[4] See *Yearbook of the International Law Commission, 1971*, vol. II, Part One, document A/CN.4/247, article 1.

39. The CHAIRMAN suggested that the Special Rapporteur be asked to draft an appropriate reservation and that, on that understanding, article 2 be referred to the Drafting Committee.

It wa so agreed.[5]

ARTICLE 3

40. *Article 3*

Agreements for the devolution of treaty obligations or rights upon a succession

1. A predecessor State's obligations and rights under treaties in force in respect of a territory which is the subject of a succession do not become applicable as between the successor State and third States, parties to those treaties, in consequence of the fact that the predecessor and the successor States have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.

2. When a predecessor and a successor State conclude such a devolution agreement, the obligations and rights of the successor States in relation to third States under any treaty in force in respect of its territory prior to the succession are governed by the provisions of the present articles.[6]

41. Sir Humphrey WALDOCK (Special Rapporteur) introducing article 3, said he had prepared a long commentary which covered most of the points that arose in connexion with the article.

42. The purpose of his draft articles 3 and 4 was to clear the ground to some extent for the Commission's work on the substantive provisions that followed, especially those on multilateral and bilateral treaties in the context of new States.

43. The exact placing of article 3 would have to be decided later. Its contents reflected a practice which had developed after the end of the Second World War and for which the United Kingdom Government was largely responsible. In view of the existence of that practice, it was necessary to include in the draft a provision stating the effect of devolution agreements as between predecessor and successor States. The rule in the matter, as he saw it, was that devolution agreements did not of themselves produce any results in relation to third parties.

44. In 1963, during the deliberations of the Commission's Sub-Committee on Succession of States and Governments, the question of the validity of devolution agreements had been discussed in a working paper submitted by Mr. Bartoš.[7] In his own view, as explained in paragraph (8) of the commentary, the validity of such agreements was a matter to be determined under the provisions of the 1969 Vienna Convention on the Law of Treaties, in particular those of articles 42 to 53, which contained the basic rules on the validity of treaties. The fact of the matter was that devolution agreements had generally been treated as valid by the States concerned. Any difficulties that had arisen had not been connected so much with the question of validity as with the problem of determining the actual meaning of devolution agreements in terms of succession.

45. Paragraph 1 stated the general rule that devolution agreements concerned essentially the predecessor and successor States and did not, as such, affect rights and obligations vis-à-vis third States.

46. Paragraph 2 stated that, where a devolution agreement was concluded, the obligations and rights of the successor State in relation to other States parties were governed by the provisions of the draft articles, in other words, by the rules of succession.

47. Apart from that, a devolution agreement might in practice influence the policy of the successor State, but effects of that kind were not expressible in terms of law.

48. Bearing in mind that the United Kingdom Government had been to a large extent the originator of the modern practice of devolution agreements, he had pointed out that the United Kingdom, when in the position of a State called upon by a successor State to apply its predecessor's treaty, had insisted that a devolution agreement could not make the treaty binding upon the United Kingdom.

49. Mr. USHAKOV said that article 3 raised a number of general questions. The term "devolution agreement", which was used in paragraph 2, was not defined in article 1. According to the commentary to article 3, that term designated an agreement by which a metropolitan State transmitted some of its treaty rights and obligations to one of its formerly dependent territories when it had become a new State as a result of decolonization.

50. Article 3, however, and in particular its paragraph 1, did not contain the term "new State", but spoke of "a territory which is the subject of a succession"—an expression which did not seem to cover the case of a newly independent State. Yet there could be no doubt that article 3 applied to new States. As he had said before, he was in favour of devoting a separate part of the draft to the articles dealing with decolonization, but in any case, the term "new State" should be substituted for the form of words used by the Special Rapporteur.

51. Apart from cases of decolonization, it might be asked whether the division of a State into two or more States could give rise to devolution agreements, and if so, whether the rules stated in article 3 were applicable.

52. The question of the validity of devolution agreements, although not directly related to succession of States, had already been raised by several members of the Commission, in particular during the discussion of article 1. Although the Commission did not have to settle the question, certain passages in paragraphs (12), (13) and (16) of the commentary to article 3 suggested that in a certain sense devolution agreements were binding on the predecessor and successor States.

53. The same paragraphs of the commentary stated that certain rights and obligations of the predecessor State passed to the successor State, independently of the devolution agreement, by operation of the general rules of international law. Since the Commission's task was to codify the existing rules on succession of States it could not confine itself to mentioning the existence of general rules of international law which applied independently of devolution agreements and even independently of the rules set out in the draft articles, without expressly stating

[5] For resumption of the discussion see 1176th meeting, para. 74.

[6] For commentary see *Yearbook of the International Law Commission, 1969*, vol. II, p. 54 *et seq.*

[7] Op. cit., *1963*, vol. II, p. 293.

those rules. As he saw it, however, there were no rules of treaty or customary law which could bind newly independent States with respect to treaties concluded by the predecessor State.

54. The wording of article 3 could be improved. The phrase "A predecessor State's obligations and rights under treaties" might be replaced by the words "The treaties", since that was what was meant. The present wording suggested non-existent differences.

55. There was a discrepancy between the French and English versions of paragraph 1, where the expression "*du seul fait*" was more restrictive than the words "in consequence of the fact".

56. The term "third States" was not used in the same sense in article 3 as it was in the Vienna Convention on the Law of Treaties, and that might cause confusion.

57. In paragraph 2, it was not clear that the words "its territory" related to the successor State.

58. Lastly, the reference to the "provisions of the present articles" at the end of paragraph 2 was not quite adequate. According to the Special Rapporteur, that formula covered the whole draft, but it was obvious that the provisions relating to a union of States and to the division of one State into two or more States were not applicable in the circumstances.

59. The CHAIRMAN said it was important to determine whether it was the French version—"*du seul fait*"—or the English version—"in consequence of the fact"—which expressed the Special Rapporteur's true intention. Paragraph (27) of the commentary would seem to indicate that it was the French version which was correct, since that paragraph explained that paragraph 1 of the article stated the negative rule that the obligations and rights of a predecessor State under treaties did not become applicable as between the successor State and third States "in consequence *only* of the fact" that the predecessor and successor States had concluded a devolution agreement. It was significant that the Special Rapporteur had himself stressed the word "only".

60. He would be grateful if the Special Rapporteur would comment on the relationship between the present draft article 3 and the provisions of article 34 and the following articles of the Vienna Convention on the Law of Treaties. For example, the question of the effects of a notification under article 35 of that Convention might arise.

61. Sir Humphrey WALDOCK (Special Rapporteur) said that a notification could be a move in the direction of agreement to continue the predecessor's treaty. But he did not think that the terms of devolution agreements admitted of their being considered as treaties intended to be the means of creating obligations or rights for third States within the meaning of articles 35 and 36 of the Vienna Convention. Nor could such an intention be deduced from the mere fact of registration of the agreement.

62. He had used the word "*only*" in paragraph (27) of the commentary in order to make the meaning clear, but had thought that, in the statement of the rule in paragraph 1 of article 3 itself, the word was not necessary.

63. Mr. AGO said that before deciding whether the word "only" was necessary, the Commission should consider whether rights and obligations might sometimes become applicable without any provision to that effect in the devolution agreement. The term "devolution agreement" was vague and it would be better to speak of an "agreement for the devolution of rights and obligations".

64. Leaving aside questions of drafting for the time being, he wondered what was the exact scope of article 3. Like Mr. Ushakov, he would like to know whether it related solely to the case of a new State, and if so, whether it applied only to a State which had formerly been a dependent territory. In his commentary, the Special Rapporteur referred only to cases of decolonization. But article 3 should also apply when part of the metropolitan territory formed a new State and became the subject of an agreement for the devolution of rights and obligations. To deal with that case, the Commission might lay down rules identical with those proposed by the Special Rapporteur, or different rules.

65. In the case dealt with in article 2, namely, the transfer of an area of territory from the sovereignty of one State to that of another, an agreement for the devolution of rights and obligations might be concluded not only between an old State and the new State which had split off from it, but also between a State which ceded territory and the State which annexed it. He wondered whether the same rules would be applicable in both cases. It was essential to define the cases coming under article 3 more clearly.

66. The CHAIRMAN, speaking as a member of the Commission, said he shared some of the concern expressed by Mr. Ushakov and Mr. Ago regarding the precise scope of article 3, bearing in mind particularly the difference between the English and French versions of paragraph 1.

67. A key question was the relationship between the provisions of paragraph 1 and those of the articles on third States in the Vienna Convention on the Law of Treaties. Article 3, paragraph 1, could appear to be a limitation on those provisions of the Vienna Convention.

68. He saw no objection to the application of the rules on treaties and third States contained in the Vienna Convention to certain agreements such as those that might be entered into regarding external public debts owed under treaty arrangements by the States forming a union or federation. Another example was that of an agreement for the division of the existing external public debt between two or more States formed from the splitting up of a pre-existing State.

69. In general, he agreed on the need to define more closely the scope of article 3. The devolution agreements so far concluded appeared to incline towards the rule laid down in paragraph 1. The question arose, however, whether the same rule would apply to a devolution agreement that contained specific provisions stating clearly how particular treaty obligations were to be taken over and the manner in which they were to be carried out. He saw no reason why an agreement of that type should be precluded.

70. Mr. USHAKOV, explaining his views on the validity of devolution agreements, said that such an agreement concluded between a metropolitan State and a former dependent territory was not binding on the predecessor State and the successor State. But the situation was less clear with regard to devolution agreements concluded when an area of territory was transferred from one State to another or in the case of a union of States or the division of a State. It was important to determine the consequences following from such situations, both for the contracting parties and for third States. For that purpose, articles 34 and 35 of the Vienna Convention on the Law of Treaties might be taken as a basis.

71. Mr. AGO said that the Commission did not have to consider whether an agreement concluded between a metropolitan State and a newly independent State was binding on the two parties; the only question which arose was that of the effects of such an agreement on third parties. The purpose of article 3 was, precisely, to establish that third States were not bound by such an agreement.

72. Sir Humphrey WALDOCK (Special Rapporteur) said that Mr. Ago had stated the position very correctly. Article 3 dealt solely with the effect of devolution agreements in regard to third States. Under the provisions of the Vienna Convention, in no case could an agreement between two States bind a third State; the consent of the third State was necessary. Paragraph 1 of article 3 applied the same rule to devolution agreements.

73. The purpose of paragraph 2 was to state that cases of devolution agreements would be governed by the provisions of the draft articles. Thus, if the case related to a new State, the provisions of Part II would apply.

74. The remarks made by the Chairman when speaking as a member of the Commission had now convinced him that it would be better to introduce the word "only" into the phrase "in consequence of the fact" in the last part of paragraph 1.

75. As to the question of a metropolitan State compelling a successor State to accept certain treaty obligations, no case of that kind had in fact occurred in practice. What had occurred, on the other hand, was that not infrequently a successor State had invoked a devolution agreement when desirous of having a particular treaty continued in force.

The meeting rose at 1 p.m.

1160th MEETING

Wednesday, 17 May 1972, at 10.5 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. Castañeda, Mr. Hambro, Mr. Nagendra Singh, Mr. Quentin-Baxter, Mr. Reuter, Mr. Rossides, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Succession of States in respect of treaties

(A/CN.4/202; A/CN.4/214 and Add.1 and 2; A/CN.4/224 and Add.1; A/CN.4/249; A/CN.4/256)

[Item 1 (*a*) of the agenda]

(continued)

ARTICLE 3 (Agreements for the devolution of treaty obligations or rights upon a succession) *(continued)* [1]

1. The CHAIRMAN invited the Commission to continue consideration of draft article 3 (A/CN.4/214/Add.1).

2. Mr. USTOR said that the question had been raised during the discussion whether the rule embodied in article 3 was applicable only to devolution agreements such as those concluded by the United Kingdom, France and certain other metropolitan countries with some of their dependent territories on the occasion of their emergence to independence, or whether it was a rule of general validity and as such applied whenever a predecessor State and a successor State concluded an agreement of that kind. One example, that could be given was that of cases to which the "moving treaty frontiers" rule applied. Article 3 was couched in general terms, but the commentary [2] referred only to cases involving new States. He wished to reserve his position on that question until he had heard further explanations from the Special Rapporteur, particularly on State practice in the matter. For the time being, he would examine the rule embodied in article 3 as it applied only to a devolution agreement concluded between a new State and the former colonial Power.

3. The Special Rapporteur's view was summarized at the end of paragraph (25) of the commentary, where it was stated that "devolution agreements, however important as general manifestations of the attitude of successor States to the treaties of their predecessors, should be considered as *res inter alios acta* for the purposes of their relations with third States".

4. That statement, as well as the whole of article 3, referred of course to valid—or rather validated—devolution agreements. That should be stressed because, as mentioned in paragraph (7) of the commentary, the question had been raised of the validity of agreements of that kind, which were usually negotiated and concluded before the dependent territory had gained full independence.

5. Article 3, however, was based on the assumption that a devolution agreement, even if concluded under special and unequal circumstances, could be subsequently approved by the new State, which might regard it as valid because it had a special interest in so doing.

6. The Special Rapporteur's thesis that a devolution agreement did not bind the other parties to the predecessor State's treaties and did not create obligations for the new State towards those other parties, was well supported by State practice. It was also in conformity with the provisions of articles 34 to 36 of the Vienna

---

[1] For text see previous meeting, para. 40.

[2] See *Yearbook of the International Law Commission, 1969*, vol. II, pp. 54 *et seq.*