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Summary record of the 1196th meeting

Topic:
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1196th MEETING

Wednesday, 5 July 1972, at 9.55 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Castañeda, Mr. Elias, Mr. El-Erian, Mr. Hambro, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Rossides, Mr. Sette Câmara, 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 and Add.1 to 4; A/CN.4/L.183 and Add.1 to 5; A/CN.4/L.184 and L.185)

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

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (A/CN.4/L.183/Add.4 and Add.5)

ARTICLE X

1. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article X:

Article X

Cases of military occupation, State responsibility and outbreak of hostilities

The provisions of the present articles shall not prejudge any question that may arise in regard to a treaty from the military occupation of a territory or from the international responsibility of a State or from the outbreak of hostilities between States.

2. When the Commission had approved article 2 on transfer of territory, it had been agreed that, in view of the reference in the introductory sentence of that article to a "territory under the administration of a State", a saving clause on military occupation should be introduced into the draft.[1] The provision proposed by the Drafting Committee was modelled on article 73 of the Vienna Convention on the Law of Treaties,[2] except that it referred to military occupation of a territory but, for obvious reasons, did not refer to cases of State succession. The Committee believed that the new article should be placed at the end of the draft and it would indicate later the title of the Part to which it should belong.

Article X was approved.

ARTICLE 12[3]

3. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 12:

Article 12

Effects of a notification of succession

1. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 7 or 8 shall be considered a party or, as the case may be, contracting State to the treaty:

(*a*) On its receipt by the depositary; or

(*b*) If there is no depositary, on its receipt by the parties or, as the case may be, contracting States.

2. When under paragraph 1 a newly independent State is considered a party to a multilateral treaty which was in force at the date of the succession of States, the treaty is considered as being in force in respect of that State from the date of the succession of States unless:

(*a*) The treaty otherwise provides;

(*b*) In the case of a treaty which falls under article 7, paragraph 3, a later date is agreed by all the parties;

(*c*) In the case of other treaties, the notification of succession specifies a later date.

3. When under paragraph 1 a newly independent State is considered a contracting State to a multilateral treaty which was not in force at the date of the succession of States, the treaty enters into force in respect of that State on the date provided by the treaty for its entry into force.

4. The Drafting Committee had deleted the words "in respect of a multilateral treaty" from the title of the article as originally submitted by the Special Rapporteur (A/CN.4/224/Add.1), since the article was in a section of Part III entitled "Multilateral treaties". Paragraph 1 dealt with the question of the date from which the successor State was bound, and concerned all treaties, whether or not they were in force at the date of the succession of States. Hence the use of the phrase "shall be considered a party or, as the case may be, contracting State". Paragraphs 2 and 3 dealt with the question of the date from which the treaty was considered as being in force in respect of the successor State. Paragraph 2 concerned the case of a treaty which was in force at the date of the succession of States, and laid down the general rule that such a treaty was considered as being in force in respect of the successor State from the date of the succession, the three exceptions to that rule being contained in sub-paragraphs (*a*), (*b*) and (*c*). Paragraph 3 concerned the case of a treaty which was not in force at the date of the succession and stated the obvious rule that in such a case the treaty entered into force in respect of the successor State on the date provided by the treaty itself.

5. The CHAIRMAN, speaking as a member of the Commission, asked why the Drafting Committee had thought it necessary to refer specifically to a multilateral treaty in paragraphs 2 and 3, but not in paragraph 1.

6. Sir Humphrey WALDOCK (Special Rapporteur) suggested that the word "multilateral" should be deleted from paragraphs 2 and 3 and that, in the first line of paragraph 1, the words "the treaty" should be replaced by the words "a treaty".

It was so agreed.

Article 12, as amended, was approved.

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[1] See 1181st meeting, paras. 45 *et seq.*

[2] 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. 299.

[3] For previous discussion, see 1168th meeting, paras. 58 *et seq.*, and 1169th meeting.

ARTICLE 13 [4]

7. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 13:

Article 13

Conditions under which a treaty is considered as being in force

1. A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party on the terms prescribed in the treaty when:

(*a*) They expressly so agree; or

(*b*) By reason of their conduct they are to be considered as having so agreed.

2. A treaty considered as being in force under paragraph 1 applies in the relations between the successor State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

8. Article 13 was the first article of the section of Part III dealing with bilateral treaties. The Drafting Committee had made few changes to the text originally submitted by the Special Rapporteur (A/CN.4/249), but had recast the title, because it took the view that the word "consent" did not properly express the concept of mutual agreement underlying the article. It had deleted the word "bilateral", as being superfluous, and replaced the words "continuing in force" by the words "being in force", since the treaty had, in fact, never been in force between the successor State and the other State party. In paragraph 1, the words "on the terms prescribed in the treaty" had been introduced to make it clear that the article dealt with definitive and not provisional application.

9. Sir Humphrey WALDOCK (Special Rapporteur) replying to a question by the Chairman, explained that it was necessary to make it clear in the article that application of the treaty was not provisional. That was not easy to do without using the term "definitive", which he had thought might not be readily understood. He had included an explanation in the commentary, but he suggested that, in order to make the meaning clearer, the phrase "in conformity with the provisions of the treaty" should be used in the article itself, instead of "on the terms prescribed in the treaty".

It was so agreed.

Article 13, as amended, was approved.

ARTICLES 14 and 16

10. Mr. USTOR (Chairman of the Drafting Committee) said that the original articles 14 and 16 had disappeared from the draft because the provisions of those articles would be covered by the section dealing with provisional application.[5]

ARTICLE 15 [6]

11. Mr. USTOR (Chairman of the Drafting Committee) said the Committee proposed the following title and text for article 15:

Article 15

The position as between the predecessor and the successor State

A treaty which under article 13 is considered as being in force between a newly independent State and the other State party is not by reason only of that fact to be considered as in force also in the relations between the predecessor and the successor State.

12. The Drafting Committee had made few changes in article 15. The purpose of most of those changes had been to bring the article into line with the articles already approved by the Commission.

Article 15 was approved.

ARTICLE 17 [7]

13. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 17:

Article 17

Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party

1. When under article 13 a treaty is considered as being in force between a newly independent State and the other State party, the treaty:

(*a*) Does not cease to be in force in the relations between them by reason only of the fact that it has subsequently been terminated in the relations between the predecessor State and the other State party;

(*b*) Is not suspended in operation in the relations between them by reason only of the fact that it has subsequently been suspended in operation on the relations between the predecessor State and the other State party;

(*c*) Is not amended in the relations between them by reason only of the fact that it has subsequently been amended in the relations between the predecessor State and the other State party.

2. The fact that a treaty has been terminated or, as the case may be, suspended in operation in the relations between the predecessor State and the other State party after the date of the succession of States does not prevent the treaty from being considered as in force or, as the case may be, in operation between the successor State and the other State party if it is established in accordance with article 13 that they so agreed.

3. The fact that a treaty has been amended in the relations between the predecessor State and the other State party after the date of the succession of States does not prevent the unamended treaty from being considered as in force under article 13 in the relations between the successor State and the other State party, unless it is established that they intended the treaty as amended to apply between them.

14. The Committee had taken the view that, in addition to termination and amendment of the treaty, article 17 should also cover the case of suspension of operation. The title and the structure of the article had been modified

[4] For previous discussion see 1170th meeting.

[5] Part III, section 4 of the text adopted in the Commission's report (A/8710/Rev.1).

[6] For previous discussion see 1171st meeting, paras. 49 *et seq.*

[7] For previous discussion see 1172nd meeting, paras. 69 *et seq.*, and 1173rd meeting, paras. 13 *et seq.*

accordingly. Paragraph 1 dealt with cases in which the treaty was terminated, suspended in operation or amended after the newly independent State and the other State party had agreed to continue it. The Committee had introduced into that paragraph a new sub-paragraph (*b*) dealing with suspension of operation. Paragraphs 2 and 3 dealt with cases in which the treaty was terminated, suspended in operation or amended after the succession of States, but before the newly independent State and the other State party could be considered as having agreed on its continuance. Paragraph 2 dealt with termination of operation and paragraph 3 with amendment, but the rules laid down in the two paragraphs were parallel.

15. Mr. AGO said that the French text of paragraph 2 should be brought into line with the English text and that the phrase "suspended in operation" should be translated by the words "*que son application a été suspendue*" instead of by the words "*qu'un traité a été suspendu*".

16. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission approved article 17, subject to amendment of the French text.

It was so agreed.

ARTICLE 17 *(bis)*

17. Mr. USTOR (Chairman of the Drafting Committee) said that articles 17 *(bis)*, 17 *(ter)* and 17 *(quater)* formed a new section entitled "provisional application". The method of grouping in a separate section all the provisions of Part III relating to provisional application, rather than distributing them between the sections dealing with multilateral and bilateral treaties, had the advantage of avoiding repetition.

18. The Committee proposed the following title and text for article 17 *(bis)*:

Article 17 (bis)
Multilateral treaties

1. A multilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as applying provisionally between the successor State and another State party to the treaty if the successor State notifies the parties or the depositary of its wish that the treaty should be so applied and if the other State party expressly so agrees or by reason of its conduct is to be considered as having so agreed.

2. However, in the case of a treaty which falls under article 7, paragraph 3, the consent of all the parties to such provisional application is required.

19. Article 17 *(bis)* dealt with the provisional application of multilateral treaties and contained the substance of paragraph 1 of the original article 16.[8] Paragraph 1 of article 17 *(bis)* stated the general rule that a treaty would be considered as applying provisionally between the successor State and another State party if the successor State notified the parties or the depositary of its wish that it should be so applied, and if the other State party expressly so agreed or by reason of its conduct was to be considered as having so agreed. Paragraph 2 dealt with the special case of treaties falling under article 7, paragraph 3, and laid down the usual rule concerning the consent of all the parties.

20. The CHAIRMAN, speaking as a member of the Commission, observed that it was not clear from paragraph 1 whether the successor State had to notify all the parties to the treaty if it wished to apply the treaty provisionally only as between itself and one of the parties.

21. Mr. USTOR (Chairman of the Drafting Committee) said that such a case was hardly likely to arise in practice, but that if it did, he would assume that the successor State was obliged to notify only the party in question.

22. Sir Humphrey WALDOCK (Special Rapporteur) said that what usually happened was that a newly independent State made a general declaration, referring not only to a particular treaty but to multilateral treaties in general, that it was prepared to apply such treaties provisionally as between itself and any individual State that so wished. That was, he believed, the correct approach, because it was not possible to notify participation in a multilateral treaty on a provisional basis, since the treaty itself made no provision for such a limited form of participation. In practice, newly independent States seemed never to have thought that they could ask for any such limited participation. The article was thus mainly intended to cover the possible putting into operation of a multilateral treaty on a bilateral basis, between the successor State and such States parties as agreed to that arrangement.

23. Mr. USTOR (Chairman of the Drafting Committee), in reply to a question by Mr. Castañeda, explained that the procedure envisaged in paragraph 1 depended on the intention of the successor State. The successor State could, if it so wished, inform the other parties that it needed a period of reflexion and intended to apply the treaty provisionally. The other parties could either make a specific reply or give their implicit consent.

Article 17 (bis) *was approved.*

ARTICLE 17 *(ter)*

24. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 17 *(ter)*:

Article 17 (ter)
Bilateral treaties

A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as applying provisionally between the successor State and the other State party if:

(*a*) They expressly so agree; or

(*b*) By reason of their conduct they are to be considered as having agreed to continue to apply the treaty provisionally.

25. The text, which dealt with the provisional application of bilateral treaties, was modelled both on article 17 *(bis)* and on article 13, paragraph 1, concerning the definitive application of bilateral treaties; it was self-explanatory.

Article 17 (ter) *was approved.*

[8] For discussion of which see 1172nd meeting.

ARTICLE 17 *(quater)*

26. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 17 *(quater)*:

Article 17 (quater)
Termination of provisional application

1. The provisional application of a multilateral treaty under article 17 *(bis)* terminates if:

(*a*) The States provisionally applying the treaty so agree;

(*b*) Either the successor State or the other State party gives reasonable notice of such termination and the notice expires; or

(*c*) In the case of a treaty which falls under article 7, paragraph 3, either the successor State or the parties give reasonable notice of such termination and the notice expires.

2. The provisional application of a bilateral treaty under article 17 *(ter)* terminates if:

(*a*) The successor State and the other State party so agree; or

(*b*) Either the successor State or the other State party gives reasonable notice of such termination and the notice expires.

3. Reasonable notice of termination for the purpose of the present articles shall be:

(*a*) Such period as may be agreed between the States concerned; or

(*b*) In the absence of any agreement, twelve months' notice unless a shorter period is prescribed by the treaty for notice of its termination.

27. Article 17 *(quater)* replaced article 4, paragraphs 2 and 3,[9] and article 14.[10] Paragraph 1 dealt with multilateral treaties; the general rules were contained in sub-paragraphs (*a*) and (*b*) and the special case of treaties falling under article 7, paragraph 3, was dealt with in sub-paragraph (*c*). Paragraph 2 dealt with bilateral treaties and was modelled on paragraph 1, except of course for the omission of sub-paragraph (*c*). Paragraph 3 specified what was considered a reasonable period of notice for the purposes of the draft articles.

Article 17 (quater) *was approved.*

ARTICLE 1

28. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 1:

Article 1
Use of terms

1. For the purposes of the present articles:

(*a*) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(*b*) "Succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(*c*) "Predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(*d*) "Successor State" means the State which has replaced another State on the occurrence of a succession of States;

(*e*) "Date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(*f*) "Newly independent State" means a State the territory of which immediately before the date of the succession of States was dependent territory for the international relations of which the predecessor State was responsible;

(*g*) "Notification of succession" means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State to the parties or, as the case may be, contracting States or to the depositary expressing its consent to be considered as bound by the treaty;

(*h*) "Full powers" means in relation to a notification of succession a document emanating from the competent authority of a State designating a person or persons to represent the State for making the notification;

(*i*) "Ratification", "acceptance" and "approval" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(*j*) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty or when making a notification of succession to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(*k*) "Contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(*l*) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(*m*) "Other State party" means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates;

(*n*) "International organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

29. Article 1 was to a large extent modelled on article 2 of the Vienna Convention on the Law of Treaties.[11] Paragraph 1, sub-paragraphs (*a*), (*j*), (*k*), (*l*) and (*n*) and paragraph 2 required no explanation, since they were the same as the corresponding paragraphs in the Vienna Convention. With regard to paragraph 1 (*b*), the Drafting Committee had been in some doubt as to whether the word "responsibility" should be retained, but had decided that further explanations could be given in the commentary to avoid any misunderstanding. Paragraphs 1 (*c*) and 1 (*d*) were self-explanatory. Paragraph 1 (*e*) might have been drafted more concisely, on the lines of paragraphs 1 (*c*) and 1 (*d*), but the Committee had considered it necessary to be more specific in dealing with the determination of a date.

30. In paragraph 1 (*f*), the phrase "dependent territory" covered colonial territories, trust territories and mandated

[9] See 1160th meeting, para. 64.

[10] See 1171st meeting.

[11] 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. 289.

territories. The Committee had considered including in paragraph 1 (*f*) a clause concerning a territory which separated from a State to become an individual State, but had come to the conclusion that it was not necessary, since article 21, on separation of part of a State, assimilated the State emerging from a separation to a newly independent State.

31. Paragraph 1 (*g*) was self-explanatory and he only wished to point out that the words "however phrased or named" had been included to take account of the fact that, in practice, the instrument by which a successor State expressed its consent to be bound by a treaty was not necessarily called a notification. Paragraph 1 (*h*) was an adaptation to the present context of the definition in article 2, paragraph 1 (*c*), of the Vienna Convention. Paragraph 1 (*i*) reproduced the terms of article 2, paragraph 1 (*b*) of the Vienna Convention except for the omission of the word "accession", which did not appear in the present draft articles. Paragraph 1 (*m*) was self-explanatory.

32. The CHAIRMAN, speaking as a member of the Commission, asked how the definition of "succession of States" in paragraph 1 (*b*) related to such cases as Liechtenstein, San Marino and Andorra, where the responsibility for international relations was divided.

33. After a brief discussion in which Mr. USHAKOV, Mr. AGO and Mr. BARTOŠ took part, Sir Humphrey WALDOCK (Special Rapporteur) said that a distinction must be made between the conduct of international relations and responsibility for international relations. The latter phrase had always been used in connexion with dependent territories in the past and was the best short definition possible. There would be some discussion of the question in the commentary to the article.

Article 1 was approved.

ARTICLE 17 *(quinquies)*

34. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 17 *(quinquies)*:

Article 17 (quinquies)
Newly independent States formed from two or more territories

When the newly independent State has been formed from two or more territories in respect of which the treaties in force at the date of the succession of States were not identical, any treaty which is continued in force under articles 7 to 17 is considered as applying in respect of the entire territory of that State unless:

(*a*) It appears from the treaty or is otherwise established that the application of the treaty to the entire territory would be incompatible with its object and purpose or the effect of the combining of the territories is radically to change the conditions for the operation of the treaty;

(*b*) In the case of a multilateral treaty other than one referred to in article 7, paragraph 3, the notification of succession is restricted to the territory in respect of which the treaty was in force prior to the succession;

(*c*) In the case of a multilateral treaty of the kind referred to in article 7, paragraph 3, the successor State and the other States parties otherwise agree;

(*d*) In the case of a bilateral treaty, the successor State and the other States party otherwise agree.

35. Article 17 *(quinquies)* corresponded to the provision originally submitted to the Commission by the Special Rapporteur as Excursus A (A/CN.4/256/Add.1). The Drafting Committee proposed that it should constitute section 4 of Part III,[12] and that both section 4 and article 17 *(quinquies)* should be entitled "Newly independent States formed from two or more territories".

36. Since the article dealt with a newly independent State, the rules applicable were naturally those contained in articles 7 to 17, as was stated in the opening paragraph. However, when the various territories forming the newly independent State were subject to different treaty régimes, a problem arose as to the geographical scope of each treaty. Article 17 *(quinquies)* provided that in such cases any treaty which was continued in force under articles 7 to 17 was considered as applying in respect of the entire territory of the State concerned. That provision was, however, a mere presumption, as appeared clearly from sub-paragraphs (*a*) to (*d*). The proviso on incompatibility, in the first part of sub-paragraph (*a*), had been included in other articles and did not require any explanation. The proviso in the second part of sub-paragraph (*a*) was derived from article 62 of the Vienna Convention and based on the idea that the radical changes resulting from the combining of the territories might entirely alter the situation for which the treaty had originally been concluded. Sub-paragraph (*b*) allowed the successor State to depart from the rule in article 17 *(quinquies)*, with the proviso that in the case of restricted multilateral treaties and bilateral treaties the agreement of the other party or parties was required.

37. In reply to a question by the Chairman, he explained that the source of the incompatibility provision was article 7, paragraph 2 (A/CN.4/L.183/Add.2). The succession of a newly independent State to a multilateral treaty depended on a notification of succession by that State, and in the case of restricted multilateral treaties and bilateral treaties it depended on the agreement of the newly independent State and the other party or parties. There might be a case, although it was very unlikely, in which a multilateral treaty had a territorial character and applied to only one of the territories constituting the newly independent State, so that the notification of succession could be restricted to that territory. Then, under sub-paragraph (*b*) of article 17 *(quinquies)*, the treaty would not be considered as applying in respect of the entire territory of that State.

Article 17 (quinquies) *was approved.*

ARTICLE 19

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

Article 19
Uniting of States

1. On the uniting or two or more States in one State, any treaty in force at that date between any of those States and other States

[12] Part III, section 5 of the text adopted in the Commission's report (A/8710/Rev.1).

parties to the treaty continues in force between the successor State and such other States parties unless :

(*a*) The application of the particular treaty after the uniting of the States would be incompatible with its object and purpose;

(*b*) The effect of the uniting of the States is radically to change the conditions for the operation of the treaty; or

(*c*) The successor State and the other States parties otherwise agree.

2. Any treaty continuing in force in conformity with paragraph 1 is binding only in relation to the area of the territory of the successor State in respect of which the treaty was in force at the date of the uniting of the States unless:

(*a*) The successor State notifies the parties or the depositary that the treaty is to be considered as binding in relation to its entire territory;

(*b*) In the case of a multilateral treaty falling under article 7, paragraph 3, the successor State and all the parties otherwise agree; or

(*c*) In the case of a bilateral treaty, the successor State and the other State party otherwise agree.

3. Paragraphs 1 and 2 apply also when a successor State itself unites with another State.

39. Article 19, which was the first of the three articles constituting Part IV: Uniting, dissolution and separation, dealt with the uniting of two or more States into one State. The text proposed by the Drafting Committee made no distinction as to whether the constituent parts of the State which emerged from that process did or did not retain some separate identity.

40. Paragraph 1 laid down the rule of *ipso jure* continuity, but provided for three exceptions, contained in sub-paragraphs (*a*), (*b*) and (*c*). No comment was necessary on those exceptions, since they were similar to those appearing in article 17 *(quinquies)*, which he had already introduced.

41. Paragraph 1 had to be read in conjunction with paragraph 2, which provided for an important limitation to the rule, namely, that a treaty continuing in force under paragraph 1 was binding only in relation to the area of the territory of the successor State in respect of which the treaty had been in force at the date of the uniting of the States.

42. The rule in paragraph 2 was itself not an absolute one, since the successor State was free to depart from it, as provided in sub-paragraph (*a*). But the freedom of the successor State was limited in the case of restricted multilateral and bilateral treaties by the requirement laid down in sub-paragraphs (*b*) and (*c*), that the agreement of the other party or parties must be obtained.

43. Mr. CASTAÑEDA proposed that the exception set out in paragraph 1 (*c*) should be moved up to become paragraph 1 (*a*). It would seem more logical to provide first for the possibility that the successor State and the other States parties might otherwise agree.

44. Sir Humphrey WALDOCK (Special Rapporteur) said that a case could equally well be made for leaving that exception in the third position, since the first two exceptions related to cases in which an agreement between the States concerned was not conceivable. Nevertheless, he would not oppose the proposal.

45. Mr. QUENTIN-BAXTER proposed that, for the sake of uniformity, the first two exceptions should be put into a single sub-paragraph, as in paragraph 2 of article 20 and paragraph 1 (*a*) of article 21.

46. The CHAIRMAN, speaking as a member of the Commission, said that the wording of paragraph 2 (*a*) needed some clarification.

47. Sir Humphrey WALDOCK (Special Rapporteur) proposed that the words "of a multilateral treaty" should be inserted after the words "the parties or the depositary" in paragraph 2 (*a*), the provisions of which related exclusively to multilateral treaties. Paragraph 2 (*b*) referred to restricted multilateral treaties as defined in article 7, paragraph 3, and paragraph 2 (*c*) referred specifically to bilateral treaties.

48. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to approve article 19 with the changes proposed by Mr. Castañeda, Mr. Quentin-Baxter and the Special Rapporteur.

It was so agreed.

ARTICLE 20

49. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 20:

Article 20
Dissolution of a State

1. When a State is dissolved and parts of its territory become individual States:

(*a*) Any treaty concluded by the predecessor State in respect of its entire territory continues in force in respect of each State emerging from the dissolution;

(*b*) Any treaty concluded by the predecessor State in respect only of a particular part of its territory which has become an individual State continues in force in respect of this State alone;

(*c*) Any treaty binding upon the predecessor State under article 19 in relation to a particular part of the territory of the predecessor State which has become an individual State continues in force in respect of this State.

2. Sub-paragraphs (*a*) and (*b*) of paragraph 1 do not apply if the application of the treaty in question after the dissolution of the predecessor State would be incompatible with the object and purpose of the treaty or the effect of the dissolution is radically to change the conditions for the operation of the treaty.

50. Article 20 dealt with the case in which a State completely disappeared as the result of splitting up into two or more individual States. It made no distinction as to whether the parts of territory which emerged as individual States had or had not possessed a certain identity as constituent parts of the predecessor State. The article applied only to those parts of the predecessor State's territory which became States, since any parts of territory which would simply pass under the sovereignty of a pre-existing State would be governed by the "moving treaty-frontiers" rule.

51. Paragraph 1 (*a*) laid down the principle of *ipso jure* continuity for any treaty concluded by the predecessor State in respect of its entire territory. Paragraph 1 (*b*) contained a rule, parallel to the rule in article 19, that

any treaty concluded in respect of a part of the predecessor State's territory which had become an individual State continued in force for that State alone. Paragraph 1 (*c*) dealt with the case of ephemeral unions. It provided that if a treaty had become binding upon the predecessor State as a result of a uniting of States in accordance with article 19, and if one or more of the States which had united subsequently regained the status of an independent State, the treaty in question would continue in force in respect of that State or States.

52. Paragraph 2 set out the exceptions to the rule in paragraph 1. He had already commented, in connexion with article 19, on the exceptions of incompatibility and radical change of conditions; he need only add that, for obvious reasons, those exceptions did not apply in the case envisaged in paragraph 1 (*c*).

53. Sir Humphrey WALDOCK (Special Rapporteur) said that the article might be said to represent progressive development in that, by contrast with the traditional text-book treatment of the dissolution of a State, its provisions were not solely applicable to unions of States. It would be necessary to explain in the commentary that, in view of the present great variety of constitutional arrangements, the Commission had not thought it possible to follow the traditional treatment in framing the rule in article 20.

54. Mr. RAMANGASOAVINA proposed that, in the French version of paragraphs 1 (*b*) and 1 (*c*), the words "*d'une certaine partie*" should be replaced by "*d'une partie déterminée*".

55. Mr. HAMBRO said he saw no reason to limit the exception in paragraph 2 to sub-paragraphs (*a*) and (*b*) of paragraph 1.

56. Sir Humphrey WALDOCK (Special Rapporteur) said that he would have no objection to sub-paragraph (*c*) being covered as well, though he did not think it was strictly necessary.

57. In order also to introduce the idea of a contrary agreement into paragraph 2, he proposed that the opening phrase should be reworded to read:

> 2. Paragraph 1 does not apply if:
>
> (*a*) The States concerned otherwise agree; or
>
> (*b*) The application of the treaty in question...

58. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to approve article 20 with the changes proposed.

It was so agreed.

ARTICLE 21

59. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 21:

Article 21
Separation of part of a State

> 1. If part of the territory of a State separates from it and becomes an individual State, any treaty which at the date of the separation was in force in respect of that State continues to bind it in relation to its remaining territory, unless:
>
> (*a*) It appears from the treaty or from its object and purpose that the treaty was intended to relate only to the territory which has separated from that State or the effect of the separation is radically to transform the obligations and rights provided for in the treaty; or
>
> (*b*) It is otherwise agreed.
>
> 2. In such a case, the individual State emerging from the separation is to be considered as being in the same position as a newly independent State in relation to any treaty which at the date of separation was in force in respect of the territory now under its sovereignty.

60. Article 21 dealt with the case in which part of the territory of a State became an individual State, but the predecessor State continued to exist. Paragraph 1 dealt with the position of the predecessor State: it provided that the predecessor State's treaties continued to bind it in relation to its remaining territory. The rule of *ipso jure* continuity was subject to exceptions laid down in sub-paragraphs (*a*) and (*b*), which did not require any explanation.

61. Paragraph 2 dealt with the position of the new State emerging from the separation. It placed that State in the same position as a newly independent State in relation to the treaties which, at the date of the separation, had been in force in respect of the territory passing under its sovereignty.

62. The CHAIRMAN, speaking as a member of the Commission, said that he would not oppose the approval of article 21, but wished to place on record that he still had some doubts about the fundamental logic of the position taken in paragraph 2. He was not at all certain that the rules on newly independent States should invariably apply to all the States envisaged in article 21.

63. Sir Humphrey WALDOCK (Special Rapporteur) proposed that the order of sub-paragraphs (*a*) and (*b*) should be reversed, in line with the presentation adopted for the two previous articles.

It was so agreed.

Article 21, as amended, was approved.

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

(A/CN.4/L.187 and Add.1 to 16)

64. The CHAIRMAN invited the Commission to consider the draft report on the work of its twenty-fourth session, beginning with chapter II (A/CN.4/L.187).

Chapter II

SUCCESSION OF STATES IN RESPECT OF TREATIES

A. *Introduction* (paras. 1 to 23)

1. *Summary of the Commission's proceedings* (paras. 1 to 11).

Sub-section 1 was approved.

2. *State practice as evidence of the law relating to succession in respect of treaties* (paras. 12 to 14).

65. Sir Humphrey WALDOCK (Special Rapporteur) proposed that the title of the sub-section should be shortened to read: "State practice".

It was so agreed.

66. The CHAIRMAN suggested that the wording of the last sentence of paragraph 14 could be improved. The reference to "the development and the publication" of State and depositary practice was not altogether happy.

67. Sir Humphrey WALDOCK (Special Rapporteur) said that the intention was to refer to the publicity given to that practice. The difficulty of ascertaining the practice was well known. He would, however, try to improve the wording.

Sub-section 2 was approved on that understanding.

3. *The concept of "succession of States" which emerged from the study of the topic* (paras. 15 to 17).

68. The CHAIRMAN pointed out that the words "a certain legal nexus" in the last sentence of paragraph 16 appeared to introduce an element of doubt.

69. Sir Humphrey WALDOCK (Special Rapporteur) proposed the deletion of the word "certain". He further proposed that the words "competence to conclude treaties" in the first sentence of the same paragraph should be replaced by the formula "responsibility for international relations", which the Drafting Committee had decided to use in the definition of succession of States.

It was so agreed.

70. Mr. USHAKOV proposed that a similar change should be made in the second sentence of paragraph 17.

It was so agreed.

71. The CHAIRMAN proposed the deletion of the word "exclusively" after the word "ascertain" in the last sentence of paragraph 17. As it stood, the sentence seemed unduly categorical.

It was so agreed.

Sub-section 3, as amended, was approved.

4. *Relationship between succession in respect of treaties and the general law of treaties* (paras. 18 to 21).

72. Mr. AGO proposed the deletion of the words "of succession of States" from the first sentence of paragraph 18. It was sufficient to say that State practice afforded "no convincing evidence of any general doctrine by reference to which the various problems of succession in respect of treaties could find their appropriate solution."

It was so agreed.

73. Sir Humphrey WALDOCK (Special Rapporteur) proposed the deletion of the word "compelling" before the words "specific solutions" in the second sentence of paragraph 18.

It was so agreed.

74. Mr. AGO thought that an attempt should be made to improve the wording of the last clause of the first sentence of paragraph 19: "than of integrating treaties into any general law of succession".

75. Sir Humphrey WALDOCK (Special Rapporteur) proposed that the phrase should be replaced by the words "than *vice versa*".

76. He also proposed that the words "the essential framework" in the last sentence of paragraph 19 should be replaced by the words "an essential framework", so as to indicate that the 1969 Vienna Convention was not the only source.

It was so agreed.

77. Sir Humphrey WALDOCK (Special Rapporteur) proposed that the words "the need of avoiding to delay" in the second sentence of paragraph 20 should be replaced by "the need not to delay".

It was so agreed.

78. The CHAIRMAN suggested that the word "assume" in the first sentence of paragraph 21 should be replaced by a more suitable word.

79. Sir Humphrey WALDOCK (Special Rapporteur) said the intention was to indicate that, in preparing the draft articles, the Commission had worked on the basis of the provisions, wording and terminology of the Vienna Convention on the Law of Treaties.

80. Mr. SETTE CÂMARA proposed that the word "assume" should be replaced by the word "presuppose".

81. Sir Humphrey WALDOCK (Special Rapporteur) suggested that the term "presuppose" should be used unless a more satisfactory term could be found.

It was so agreed.

Sub-section 4 as amended, was approved.

5. *The principle of self-determination and the law relating to succession in respect of treaties* (paras. 22 and 23).

Paragraph 22

Paragraph 22 was approved.

Paragraph 23

82. Mr. HAMBRO proposed the deletion of the adjective "careful" before the word "study" in the first sentence of paragraph 23. He saw no reason why the Commission should indicate that its study of a certain matter had been "careful". The same remark applied to the adjective "close" in the opening words of paragraph 18: "A close examination of State practice...".

83. Sir Humphrey WALDOCK (Special Rapporteur) agreed that the word "careful" should be deleted from the first sentence of paragraph 23; it was not the Commission's practice to use that adjective in relation to its study of any matter. He could not, however, agree with the criticism of the opening words of paragraph 18. There was some point in indicating that an examination of State practice, however close, afforded no convincing evidence of any general doctrine for the solution of the problems in question.

The proposal to delete the word "careful" from the first sentence of paragraph 23 was adopted.

84. Mr. AGO proposed that, in the fourth sentence of paragraph 23, the concluding words "relating to seceded

States", which appeared to be difficult to render into French, should be replaced by the words "relating to cases of secession".

It was so agreed.

85. Sir Humphrey WALDOCK (Special Rapporteur) suggested that the last two sentences of paragraph 23 should be dropped. In view of decisions taken by the Commission after they had been drafted, they were inaccurate.

It was so agreed.

Paragraph 23, as amended, was approved.

86. Sir Humphrey WALDOCK (Special Rapporteur) explained that the five sub-sections so far considered did not exhaust the contents of the introduction. A further document would be issued containing explanations of the form, scope and scheme of the draft articles as a whole.[13]

The meeting rose at 12.55 p.m.

[13] Document A/CN.4/L.187/Add.20, discussed at the 1199th meeting, paras. 11 to 14.

1197th MEETING

Thursday, 6 July 1972, at 9.35 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Castañeda, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Rossides, Mr. Sette Câmara, 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 and Add.1 to 4; A/CN.4/L.183 and Add.1 to 6; A/CN.4/L.184 and L.185)

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

(resumed from the previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (A/CN.4/L.183/Add.6)

ARTICLE 22

1. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 22:

Article 22
Boundary régimes

A succession of States shall not as such affect:

(*a*) A boundary established by a treaty; or

(*b*) Obligations and rights established by a treaty and relating to the régime of a boundary.

2. That article, together with article 22 *(bis)*, would now form a separate Part V, entitled "Boundary régimes and other territorial régimes established by a treaty".

3. The Drafting Committee had considerably simplified the text of article 22 submitted by the Special Rapporteur in his fifth report (A/CN.4/256/Add.4). The text now proposed was a clear statement of the rule, namely, that a succession of States did not as such affect either a boundary established by a treaty, or treaty obligations and rights relating to a boundary régime. Those two ideas were expressed succinctly in sub-paragraphs (*a*) and (*b*). The purpose of the words "as such" in the opening sentence was to indicate that the article referred only to the rules of State succession, since other rules could come into play and affect boundaries or treaty rights and obligations relating to boundary régimes.

Article 22 was approved.

ARTICLE 22 *(bis)*

4. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 22 *(bis)*:

Article 22 (bis)
Other territorial régimes

1. A succession of States shall not as such affect:

(*a*) Obligations relating to the use of a particular territory, or to restrictions upon its use, established by a treaty specifically for the benefit of a particular territory of a foreign State and considered as attaching to the territories in question;

(*b*) Rights established by a treaty specifically for the benefit of a particular territory and relating to the use, or to restrictions upon the use of a particular territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States shall not as such affect:

(*a*) Obligations relating to the use of a particular territory, or to restrictions upon its use, established by a treaty specifically for the benefit of a group of States or of all States and considered as attaching to that territory;

(*b*) Rights established by a treaty specifically for the benefit of a group of States or of all States and relating to the use of a particular territory or to restrictions upon its use and considered as attaching to that territory.

5. Members would note that the words "and considered as attaching to that territory" had been added at the end of paragraph 2 (*b*) of the text in document A/CN.4/L.183/Add.6.

6. Paragraph 1 of the article dealt with treaty situations of a territorial character. Paragraph 2 dealt with a special kind of treaty situation, covering such matters as the use of international waterways. Each of the two paragraphs was subdivided into two sub-paragraphs, the first dealing with obligations and the second with rights. All four sub-paragraphs ended with a proviso to the effect that the obligations or rights were considered as attaching to the territories in question. The purpose of that proviso was to emphasize that the rights or obligations must have a certain connexion with the territory.

7. In reply to a question put by the Chairman, he said that the Committee had abandoned the idea of including in article 1 a provision on the use of the term "territory".