Document:-
A/CN.4/SR.1271

Summary record of the 1271st meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1974, vol. I

independent State could become a party to a treaty. It could comply with the procedure for accession prescribed in the treaty itself or in the law of treaties, so it was not essential to fill any lacuna that might exist in article 13.

The meeting rose at 6.5 p.m.

1271st MEETING

Wednesday, 5 June 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

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

Co-operation with other bodies

[Item 10 of the agenda]

1. The CHAIRMAN said that the next session of the European Committee on Legal Co-operation was to be held at Strasbourg, from 22 to 24 June 1974, and the Commission had been invited to send an observer. The enlarged Bureau had discussed the matter and proposed that the First Vice-Chairman, Mr. José Sette Câmara, should act as the Commission's observer. If there were no objections, he would take it that the Commission agreed to that proposal.

It was so agreed.

Succession of States in respect of treaties

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

[Item 4 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 13 (Participation in treaties not yet in force) (*continued*)

2. The CHAIRMAN invited the Commission to resume consideration of draft article 13.

3. Sir Francis VALLAT (Special Rapporteur) said that at the end of the previous meeting the discussion had centred on the question whether the right of a newly independent State, under paragraph 1 of article 13, to establish its status as a contracting State ceased, or did not cease, when the treaty entered into force. His own reading of article 13 was that the right continued even after the entry into force of the treaty. One argument in favour of that interpretation was the statement in paragraph (1) of the commentary (A/8710/Rev.1, chapter II, section C) that article 13 "parallels article 12", which presumably meant that it was parallel to article 12 in all respects. Another argument was that the term "contracting State" was defined in article 2 as meaning "a State which has consented to be bound by the treaty, whether or not the treaty has entered into force". If the term "contracting State" was understood in that sense, it really included a party to the treaty. He understood the term "contracting State" in the same way in the Vienna Convention on the Law of Treaties, which contained the same definition.

4. From the point of view of substance, there would be a lacuna in the draft if the provisions of article 13 were taken as ceasing to apply on the entry into force of a multilateral treaty; for if the treaty happened to enter into force very soon after the succession of States, the newly independent State would be totally deprived of its right to become a contracting State or a party to the treaty. It should be noted that article 14 of the draft would not cover the situation, because it dealt only with the case in which the predecessor State had signed the treaty but not ratified it.

5. If article 13 was not clear, it should be redrafted so as to state its intended meaning unequivocally.

6. Mr. USHAKOV said he was not entirely satisfied by the Special Rapporteur's explanations. It was not only newly independent States that were concerned: no State whatever could become a contracting State to a multilateral treaty once it had come into force. All States were therefore in the same position, and the Commission should not try to make it possible for a newly independent State to establish its status as a contracting State in those circumstances. For instance, when the Soviet Union had ratified the two International Covenants on Human Rights, it had acquired the status of a contracting State because the Covenants were not yet in force, the necessary number of ratifications or accessions not having been received. If the Covenants had already been in force, the Soviet Union could not have become a contracting State; it would have become a party to the Covenants, in accordance with the definition of that term given in article 2, paragraph 1 (*g*) of the Vienna Convention on the Law of Treaties.[1]

7. Mr. CALLE Y CALLE said that articles 12 and 13 were completely parallel. Article 12 conferred upon the newly independent State a faculty in its own right to replace the predecessor State, by way of succession, in the status of party to a multilateral treaty. The treaty in question was doubly in force: it had the number of ratifications necessary for general entry into force and it was in force for the predecessor State.

8. The case contemplated in article 13 was that of a multilateral treaty which was not yet in force for any State, because it did not have the necessary number of ratifications. The right conferred upon the newly inde-

---

[1] 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.

pendent State by article 13 was an option to notify its succession, whereby it would step into the place of the predecessor State.

9. The newly independent State thus had a clear choice between two courses. The first was to avail itself of article 13 and benefit from the status which the predecessor State had enjoyed in relation to the treaty; the second was to accede to, or accept, the treaty in the ordinary way and thus independently become a party to it.

10. It should be noted that there could be contracting States to a treaty, even if it was already in force. The definition of that term in article 2, paragraph 1 (*f*) of the Vienna Convention on the Law of Treaties, with its concluding words "whether or not the treaty has entered into force", was quite clear on that point.

11. He was not satisfied with the formulation of the rule in article 13. In the draft articles proposed by the former Special Rapporteur in his third report, article 7 (Right of a new State to notify its succession in respect of multilateral treaties) specified that a new State was "entitled to notify the parties that it considers itself a party to the treaty in its own right ...".[2] Article 8 (Multilateral treaties not in force) specified that a new State "may on its own behalf establish its consent to be bound by a multilateral treaty...".[3] The emphasis thus placed on the notion of "consent to be bound" had disappeared in the version adopted by the Commission in 1972. Article 13, paragraph 1, now provided that a newly independent State might, by a notification of succession, "establish its status as a contracting State to a multilateral treaty". That wording was unsatisfactory, particularly in the Spanish version; it seemed to suggest that there existed a "status as a contracting State" and that notification merely served to evidence that status.

12. Another difficulty arose from the opening proviso of paragraph 1. The words "Subject to paragraphs 2 and 3..." introduced the provision in paragraph 1 not as a general and principal rule, but as a residual rule; they stressed the idea of safeguarding the rules in paragraphs 2 and 3. He suggested, for the consideration of the Drafting Committee, that the opening proviso should be reworded, possibly to read: "Except in the cases mentioned in paragraphs 2 and 3...".

13. Mr. ŠAHOVIĆ said he thought that the question raised by Mr. Ushakov was one for the Drafting Committee, and that some explanation should be given in the commentary.

14. Articles 12 and 13 dealt with quite different situations. Article 12 concerned acceptance by the successor State of a multilateral treaty that was already in force, whereas article 13 concerned acquisition of the status of a contracting State. According to the Vienna Convention on the Law of Treaties, the expression "contracting State" meant "a State which has consented to be bound by the treaty, whether or not the treaty has entered into force". Consequently, he thought it would be better not to change the wording of articles 12 and 13 approved by the Commission on first reading.

15. Mr. SETTE CÂMARA said he fully agreed with Mr. Ushakov. Article 13 dealt with treaties that were not yet in force, and when a treaty had entered into force, he failed to see what interest a successor State would have in becoming a contracting State rather than a party to it. There appeared to be some misunderstanding about the definitions of a "contracting State" and a "party" in the Vienna Convention on the Law of Treaties.

16. He therefore suggested that the text of article 13 should be kept as it stood for the time being and that the Drafting Committee should be requested to study the point raised by Mr. Ushakov.

17. Mr. MARTÍNEZ MORENO said that from his reading of the draft articles submitted by the former Special Rapporteur and of the commentary to the present article appearing in the Commission's 1972 report (A/8710/Rev.1), he had the impression that the intention had been to deal with cases in which the treaty was not in force at all. Paragraph 1 of article 13, however, stated the treaty was one which "was not in force in respect of the territory to which that succession of States relates", thereby suggesting that the treaty might be in force for other States and territories.

18. If that interpretation was correct, the Drafting Committee should consider rewording paragraph 1 so as to make it clear that article 13 dealt with the case of a multilateral treaty which was not yet in force for any State, but which the predecessor State had intended to apply to the territory in question.

19. Mr. KEARNEY said that, like the previous speaker, he was concerned that article 13 should make its territorial coverage clearer. He thought the Swedish drafting proposal (A/CN.4/275) deserved consideration from that point of view. The formula proposed by the Special Rapporteur (A/CN.4/278/Add.3, para. 263) would clarify the territorial aspect.

20. Paragraph 2 of article 13 raised the same difficulty as paragraph 2 of article 12, namely, that of determining the real effect of incompatibility and finding a solution to the problem it raised. As he saw it, the only way to deal with that question was to introduce some scheme for the settlement of disputes, since there would be no system of objections and he agreed with the Special Rapporteur on the undesirability of such a system.

21. The CHAIRMAN, speaking as a member of the Commission, said that articles 12, 13 and 14 dealt with three separate cases.

22. In the case covered by article 12, a multilateral treaty was in force to which the predecessor State was a party, and that State had extended its application to the territory that was later to become a newly independent State.

23. Article 13 dealt with the case in which the predecessor State had ratified a multilateral treaty which had not yet come into force, but the ratification had taken place also in respect of the territory in question. The article provided that the successor State could step into

[2] See *Yearbook ... 1970*, vol. II, p. 37.

[3] *Ibid.*, p. 43.

the place of the predecessor State by means of a notification. By that notification, it became a contracting State and would be counted among the number of ratifications for purposes of entry into force. The idea underlying article 13 was that the decisive date was the date of the succession. If the treaty was not in force at that date, the successor State would have the option of notifying at any time, before or after entry into force, that it wished to be treated as if it had ratified the treaty at the date of succession.

24. Article 14 dealt with another case altogether; that in which the predecessor State had signed the treaty, but not ratified it. It gave the successor State the faculty of ratifying the treaty.

25. If there were any doubts about the wording of those articles, the Drafting Committee should ensure that the Commission's intentions were clearly expressed. All three articles presupposed that the treaty had been signed on behalf of the territory which was later to become the newly independent State.

26. Mr. BEDJAOUI said he had no objection to article 13, which he understood to refer to treaties that were not yet in force for any State, not only not in force for the newly independent State. That was clear from paragraph 4.

27. Article 14 dealt with quite a different situation: that in which the predecessor State had only signed a multilateral treaty, which was consequently not yet in force for the territory in question.

28. As to the setting of a time-limit, he thought it was even less justified in article 13, than in article 12.

29. With regard to the question raised by Mr. Ushakov, he did not see why article 13 should not make it possible for the successor State to become a contracting State or a State party, as the case might be.

30. Mr. USHAKOV reiterated that a State could not become a contracting State to a treaty that was in force. Article 14, paragraph 1, provided that a successor State could establish its status as a party or as a contracting State; but it was not a matter of choice. If the treaty was already in force, the successor State could only become a party; if the treaty was not in force, it could only become a contracting State. Article 13 related to treaties that were not yet in force, not only at the date of the succession, but also at the date of the notification; otherwise the successor State would no longer be able to establish its status as a contracting State.

31. With regard to article 13, paragraph 4, it should be noted that where a treaty provided that it would enter into force only when a specified number of States had become parties, and the notification of succession by which a successor State established its status as a contracting State was decisive for the treaty's entry into force, that State acquired simultaneously both the status of a contracting State and that of a party. That situation was difficult to understand on the basis of the definition of a "contracting State" given in the Vienna Convention on the Law of Treaties, according to which it was possible to become a contracting State without becoming a party to a treaty. That happened when a State signed a treaty but did not ratify it; it retained its status as a contracting State even when the treaty entered into force.

32. Mr. RAMANGASOAVINA said he was not sure what was the exact effect of article 13. Very few cases seemed to be covered by paragraph 1. The predecessor State might, for instance, have become a contracting State to a treaty it had intended to extend to a dependent territory, which had subsequently become independent. It was by the process called "promulgation" that metropolitan States had usually made international treaties applicable to a particular territory under their rule.

33. Paragraph 1 of article 13 therefore seemed to apply to that intermediate period during which a multilateral treaty might be in force for the predecessor State before the date of the succession, but not in force for the successor State, which could indicate by a notification of succession that it wished to be bound by the treaty.

34. Sir Francis VALLAT (Special Rapporteur), summing up the discussion on article 13, said he remained unconvinced by Mr. Ushakov's arguments. The definition in the Vienna Convention on the Law of Treaties had been cast wide enough to cover both States parties and States not parties. The matter was essentially one for the Drafting Committee, to which it could now be left.

35. The discussion had been useful in clarifying the issues. If the effect of article 13 would be to deprive a newly independent State of the right to become a party to a multilateral treaty simply because the treaty had come into force one or two days after independence, he believed it was contrary to the whole philosophy of articles 12 and 13.

36. Another point which needed to be clarified was whether the words "was not in force" referred to the entry into force of the treaty in general or only in respect of a particular territory.

37. The attitude to be adopted on the question of a time-limit depended on the scope of article 13. If article 13 was to have an effect parallel to that of article 12, the case for some kind of time-limit would be just as strong as it was in regard to article 12. But if article 13 only applied until a treaty came into force generally, it would have a built-in time-limit.

38. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to refer article 13 to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.[4]

ARTICLE 14

39. The CHAIRMAN invited the Special Rapporteur to introduce article 14, which read:

Article 14

Ratification, acceptance or approval of a treaty signed by the predecessor State

[4] For resumption of the discussion see 1290th meeting, para. 62.

1. If before the date of the succession of States, the predecessor State signed a multilateral treaty subject to ratification and by the signature intended that the treaty should extend to the territory to which the succession of States relates, the successor State may ratify the treaty and thereby establish its status:

(*a*) as a party, subject to the provisions of article 12, paragraphs 2 and 3;

(*b*) as a contracting State, subject to the provisions of article 13, paragraphs 2, 3 and 4.

2. A successor State may establish its status as a party or, as the case may be, contracting State to a multilateral treaty by acceptance or approval under conditions similar to those which apply to ratification.

40. Sir Francis VALLAT (Special Rapporteur) said that article 14 raised a number of difficulties. It could be argued, as a matter of principle, that there was not a sufficient legal nexus between the newly independent State and the treaty to justify giving that State the right to ratify a multilateral treaty which had been signed by the predecessor State. The question was a very open one and he had discussed the problems involved at some length in his report (A/CN.4/278/Add.3, paras. 269 to 274). His conclusion was that article 14 should be deleted. There might, however, be something to be said for retaining the article, so that the problem it raised would not be overlooked later; retaining the text in the draft would give States an opportunity of pronouncing on the question.

41. If the article was retained, however, it should be amended so as to cover certain cases other than that of signature followed by ratification, acceptance or approval. The treaty might, for example, be initialled instead of being signed, consent to be bound being expressed by subsequent signature; there was also the possibility of signature *ad referendum* and subsequent confirmation expressing consent to be bound. The article should cover all cases in which a treaty had been authenticated, but consent to be bound had not yet been given.

42. Mr. YASSEEN said he thought article 14 should be retained, even if it did not reflect practice; it was not dangerous in any way and it contributed to the progressive development of international law. There was no reason why the successor State should not be able to continue the process initiated by the predecessor State when the latter had signed a multilateral treaty and expressed its intention of extending it to the territory to which the succession related. Clearly, the obligation to act in good faith provided for in article 18 of the Vienna Convention on the Law of Treaties could not be applied by analogy to the successor State, since that State had not itself signed the treaty.

43. He was not convinced by the objections made by some Governments. A succession of States quite often took place at a time when the predecessor State had signed a multilateral treaty subject to ratification. The intention of the predecessor State that the treaty should extend to the territory to which the succession related should not be difficult to establish in each case by reference to objective circumstances.

44. Mr. SETTE CÂMARA said that his doubts about the inclusion of article 14 in the draft had been confirmed by the discussion. The signature referred to in the article was not that referred to in article 12 of the Vienna Convention on the Law of Treaties: it did not establish the predecessor State's consent to be bound, but was merely a first gesture towards future participation in the treaty. There could be no question of permitting the new State to succeed to the formality of signature.

45. Another point to be considered was that if article 14 was to be retained, it would also have to cover the cases of initialling, signature *ad referendum* and possibly some other cases.

46. The best way to avoid all those complications would be to drop the article.

47. Mr. HAMBRO said he was inclined to favour the idea of deleting article 14 as being unnecessary. There were, however, not only learned writers who believed it was worth retaining, but also Governments. It might therefore be kept in the draft, but only so that a future diplomatic conference could decide the matter.

48. He could accordingly accept the inclusion of article 14 provided it was explained in the commentary that very serious doubts had been expressed in the Commission, but that the article had been retained in order to give States an opportunity of discussing it.

49. Mr. USHAKOV said he found article 14 rather strange; it seemed to break away from the two preceding articles, which dealt with participation in a treaty through notification. He therefore supported the Special Rapporteur's suggestion that the article should be deleted, and suggested that it be explained that the Commission had been mistaken in including it.

50. Mr. BEDJAOUI said he was in favour of retaining article 14; in his view, the Commission's first idea had been the right one. Moreover, Governments had not made many comments on the article; they had expressed doubts about the need for it, but not fears that it would be dangerous. The fact that the predecessor State had signed the treaty was a first step towards execution and the solution proposed in article 14 was an entirely acceptable innovation. Moreover, as the commentary pointed out, it was the solution most favourable both to successor States and to the effectiveness of multilateral treaties—in other words to international co-operation.

51. Mr. ELIAS said he was in favour of retaining article 14, at least for the time being. The Commission had had good reasons for including that compromise provision, which seemed necessary for the symmetry of the idea it wished to embody in the draft articles. If articles 12 and 13 could be deemed to be complete, the need for article 14 might be questioned; but in fact paragraph 1 of article 12 and paragraph 1 of article 13 were not entirely satisfactory, as their substance went beyond the scope of the present wording and was taken up in article 14.

52. The four main objections to the article, mentioned in paragraphs 269 to 272 of the Special Rapporteur's report (A/CN.4/278/Add.3), were certainly valid, especially the problem of determining the intention of the predecessor State at signature; but they did not, in his

opinion, justify its deletion. In paragraph 267 of his report, the Special Rapporteur presented a good case for retaining article 14, which would establish a legal nexus between the successor State and the treaty. That link might otherwise be in doubt. There was no reason why a newly independent State should not be entitled, as a successor State, to ratify, accept or approve a treaty on its own behalf. That was sufficient justification for retaining the article on the basis of the principle underlying articles 12 and 13.

53. He was inclined to agree with Mr. Hambro that if the Commission found it difficult to deal with the problems raised by article 14 it should nevertheless retain the article, if only to show that it had considered the underlying issue and decided to draft a provision covering it. The Drafting Committee might reconsider the article in the light of the comments made by Mr. Ushakov and in the context of articles 12 and 13, to see if the wording could be made clearer. A plenipotentiary conference might well decide to delete the article, but meanwhile the Commission should carefully consider the possibility of retaining it, perhaps in a slightly modified form.

54. Mr. KEARNEY said that some of the problems mentioned were perhaps not as substantial as they appeared to be. With regard to the point raised by Mr. Ushakov, the present wording of the provision—"the successor State may ratify the treaty and thereby establish its status"—had been used because, in cases in which the predecessor State had not ratified the treaty, notification of succession would be meaningless, as the predecessor State would not have been a party at the time of the succession. It might therefore be more appropriate to have a provision requiring the successor State to do whatever was required under the treaty to become a party to it.

55. He agreed with the Special Rapporteur that it might be very difficult in practice to apply the test of the signatory State's intention at signature. In many cases that State would have signed the treaty without deciding whether it should apply to the territory to which the succession subsequently related. Where a dependent territory had been given a measure of local self-government, it was customary for the State to consult the local authorities of that territory before deciding to arrange for the application of a multilateral treaty to be extended to the territory. As the decision was normally taken between the time of signature and the time of ratification, such an intention at the times of signature could not be proved. If the article was to be retained, that problem would be difficult to solve unless the fact of signature was deemed sufficient to permit the successor State to become a party to the treaty without any additional requirement. He would prefer that solution to reliance on a test which in most cases would lead to argument and confusion.

56. He was inclined to agree with Mr. Sette Câmara that the act of signature had a political and moral effect rather than a legal effect, in so far as it indicated the signatory's intention to take action through its internal legal system to give effect to the treaty. At least that was the usual intention of the United States Government when it signed a treaty. He saw no serious danger in considering signature of a treaty by a predecessor State as establishing the right of the successor State to ratify that treaty. There were safeguards in paragraphs 2 and 3 of article 12. He would be in favour of broadening the effect of article 14 along those lines rather than deleting it.

57. Mr. REUTER observed that according to judicial decisions and the Vienna Convention, signature had a legal effect. A signatory State which had not ratified a treaty had a legal right to object to reservations made by another State or to accept them. So if a signatory State had exercised that right and the successor State later ratified the treaty under article 14, would not the successor State also be bound by the position which the predecessor State had taken with regard to the reservations? If the answer was in the negative, article 14 was bad law; if it was in the affirmative, the article assumed its full significance.

58. Mr. CALLE Y CALLE said that the comments made so far on article 14 did not show sufficient grounds for deleting it. Admittedly, the article raised certain problems and dealt with a matter that was not strictly part of the subject of succession. Under its provisions the status of the successor State in regard to a treaty was established, not by notification of the succession but, rather obviously, by the act of ratification. The article made ratification the expression of final acceptance of a treaty, while regarding signature as a mere indication of the signatory State's intention. It should be borne in mind that there were other formal acts by which a State expressed its acceptance or approval of a treaty.

59. He agreed with Mr. Elias that the draft would be incomplete without a provision on the lines of article 14, which was necessary for the symmetry of the idea the Commission wished to embody in the draft. The articles should cover the whole range of possible cases of succession in respect of treaties. He was therefore in favour of retaining article 14, but with certain drafting changes. For example, in paragraph 1, sub-paragraphs (*a*) and (*b*), it would be more appropriate to refer to articles 12 and 13, respectively, as integral rules of succession, not to individual paragraphs of those articles.

60. Mr. MARTÍNEZ MORENO said he had some misgivings about article 14, but had concluded that there was no real reason for deleting it. As there had been very few comments by Governments expressing definite opinions on the article, it should be retained until the views of other Governments had been heard, perhaps at a diplomatic conference.

61. He agreed with Mr. Kearney that it would be difficult to determine the intention of the predecessor State at the time of signature. It might be appropriate, however, to allow the presumption that in signing a treaty the signatory State intended it to apply to all territory under its authority. The Drafting Committee might consider the possibility of amending the provision along those lines.

62. Mr. QUENTIN-BAXTER said he thought that article 14 was of marginal importance, but there was

sufficient support for its retention to make deletion inadvisable at the present stage. As had already been pointed out, the article was necessary for the symmetry and logic of the theme developed in the draft as a whole, although it had no basis in State practice. It was not, in fact, a matter of succession, as the thing succeeded to was only inchoate. The Commission did not have to take a final decision on the article, however, and he agreed with Mr. Hambro that Governments should be given an opportunity to consider the proposition after the Commission had improved the drafting as much as possible. If the drafting problems proved to be insuperable and the difficulties raised by the provision were out of proportion to its practical value, the international community would be in a position to decide whether to delete it.

63. The question of a time-limit would have to be decided in relation to the more important article 12, and if that decision had implications for article 14, they could be considered in the context of article 12.

64. He did not share the concern expressed about the possibility of inequality resulting from the application of article 14. Where granting a slightly privileged position to newly independent States involved some embarrassment or uncertainty for other States until the intentions of the former States were clarified, it had been the Commission's policy to keep such consequences within bounds. Article 14, which did not create firm obligations, did not seem likely to upset that balance.

65. He shared the apprehensions of Mr. Kearney and others about determining the intention of a predecessor State at signature. There was no way of determining that intention. A signatory State would normally expect to decide whether or not the treaty should apply to a dependent territory at the time of the treaty's ratification, acceptance or approval, but not before. An attempt to apply the test of intention would, in most cases, mean attributing to a predecessor State an intention it had not had. Mr. Kearney's suggestion that the reference to intention should be omitted was not unacceptable.

66. One reason for retaining article 14, at least for the present, was to cover the exceptional case in which a dependency approaching self-government was represented at a plenipotentiary conference in the delegation of the predecessor State. When that dependency became a State, it might consider itself to be identified with the signature given on behalf of the predecessor State, but not yet reaffirmed by ratification, acceptance or approval of the treaty. The difficulties which might arise where procedures other than signature were used in regard to treaties were unlikely to be serious, as in most cases they related to such matters as the authentication of texts rather than the expression of commitments.

67. He was in favour of retaining article 14 and asking the Drafting Committee to try to eliminate the one real stumbling-block—the reference to the intention of the predecessor State.

68. Mr. USHAKOV reiterated his conviction that article 14 had little connexion with succession of States. The article did not say that a successor State retained the predecessor State's signature by notification of succession. The successor State did not in fact retain the signature, but performed an additional act. Hence it was not, strictly speaking, a matter of succession. In his view, therefore, article 14 ought to be deleted. He could agree to its retention in the draft, however, provided that certain points were explained in the commentary for the benefit of the States which would later take part in drafting the convention.

69. If the article was retained, it would have to be supplemented by stating, as in article 18, the date from which the successor State was considered to be a party to the treaty or a contracting State, as the case might be. For article 18 dealt only with the situations provided for in articles 12 and 13, not with the situation contemplated in article 14.

70. Mr. TSURUOKA said that he was in favour of deleting article 14. The article had very little connexion with succession in the strict sense and was not complete, since it did not cover all the cases that might arise in the situation contemplated. He had also been much impressed by Mr. Reuter's comment.

71. Sir Francis VALLAT (Special Rapporteur) said the discussion had shown that members of the Commission were divided as to whether article 14 should be retained or not, though the majority seemed to think that, whichever course was adopted, the article should be reconsidered by the Drafting Committee. The Commission might therefore adopt the usual procedure of approving the article provisionally and referring it to the Drafting Committee. He still considered it out of place in the present draft, but if, after its reconsideration in the Drafting Committee, opinions were still divided, it should perhaps be retained and the arguments for and against retention fully stated in the commentary for the guidance of Governments. The question could then be left for States to decide at a diplomatic conference.

72. In referring to the relationship between article 14 and the corresponding provisions of the Vienna Convention on the Law of Treaties, members had tended to assume that the normal case would always occur and to think in terms of multilateral conventions adopted at United Nations conferences. But the draft was intended to deal with all kinds of multilateral treaties not excluded by the exceptions it specified. Such treaties were sometimes adopted at *ad hoc* conferences by procedures which differed from those followed at United Nations conferences. In some cases the text of the treaty was, for good reasons, initialled but not signed at the conference, and consent to be bound by the treaty was indicated subsequently by signature. Hence, if article 14 was retained, it should be made to cover all possible cases, not only the usual cases in which signature was followed by ratification. The Drafting Committee might consider how to ensure such coverage.

73. There was also a tendency to assume that, if the procedure of ratification, acceptance or approval was not open to a successor State, the procedure of accession would be open to it. That was not always so, as not all multilateral treaties open to ratification were also

open to accession. That aspect of article 14 should be considered if the draft articles were to be made as universal as possible; unusual cases should also be borne in mind.

74. The main, but not necessarily insuperable, problem in article 14 was the impossibility of establishing, by any objective test, the intention of a signatory State at the time of signature. There was, in fact, a precedent in article 29 of the Vienna Convention on the Law of Treaties. Although it dealt only with treaties in force and binding on the parties, and not with the question of the scope of signature, he thought there should be no difficulty in providing for a presumption as to the scope of signature based on the precedent of that article. That was a matter which the Drafting Committee might consider.

75. The question of the time from which article 14 would operate also arose in connexion with articles 12, 13 and 18 and might be considered later, as the relationship between those articles would have to be examined in some detail. Time would indeed be a major feature of the Commission's discussions at its present session.

76. He doubted whether a provision was needed to deal with the question of reservations. If the doctrine of the Vienna Convention on the Law of Treaties was applied, a ratifying State would be entitled to maintain or withdraw reservations at the time of ratification. It might in fact be desirable for a newly independent State to make its position clear, but there seemed to be no basic problem which could not be solved by applying the law of treaties. However, if a newly independent State failed to indicate its attitude towards any reservations made by the predecessor State at the time of signature, a difficulty might arise. That point should perhaps be considered by the Drafting Committee with a view to clarifying the text of article 14.

77. The CHAIRMAN suggested that article 14 should be approved provisionally and referred to the Drafting Committee for further consideration with a view to working out a compromise text.

It was so agreed.[5]

The meeting rose at 1 p.m.

[5] For resumption of the discussion see 1290th meeting, para. 71.

1272nd MEETING

Thursday, 6 June 1974, at 10.15 a.m.

Chairman: Mr. Endre USTOR

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

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

1. The CHAIRMAN said it had been the Commission's practice in the past to annex to its report to the General Assembly the observations submitted by Governments. He therefore suggested that the observations of Governments on the provisional draft articles on succession of States in respect of treaties, circulated as document A/CN.4/275 and Add.1 and 2, should be annexed to the Commission's report on the work of its twenty-sixth session. It would be helpful if a decision to that effect could be taken at once, so that the Secretariat could put the necessary work in hand.

It was so decided.

Succession of States in respect of treaties

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

[Item 4 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 15

2. The CHAIRMAN invited the Special Rapporteur to introduce article 15, which read:

Article 15

Reservations

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession, it shall be considered as maintaining any reservation which was applicable in respect of the territory in question at the date of the succession of States unless:

(*a*) in notifying its succession to the treaty, it expresses a contrary intention or formulates a new reservation which relates to the same subject-matter and is incompatible with the said reservation; or

(*b*) the said reservation must be considered as applicable only in relation to the predecessor State.

2. When establishing its status as a party or a contracting State to a multilateral treaty under article 12 or 13, a newly independent State may formulate a new reservation unless:

(*a*) the reservation is prohibited by the treaty;

(*b*) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(*c*) in cases not falling under sub-paragraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty.

3. (*a*) When a newly independent State formulates a new reservation in conformity with the preceding paragraph the rules set out in articles 20, 21, 22 and article 23, paragraphs 1 and 4, of the Vienna Convention on the Law of Treaties apply.

(*b*) However, in the case of a treaty falling under the rules set out in paragraph 2 of article 20 of that Convention, no objection may be formulated by a newly independent State to a reservation which has been accepted by all the parties to the treaty.

3. Sir Francis VALLAT (Special Rapporteur) said that the most important point of substance raised by Governments in their comments was the suggestion—by Australia, Belgium, Canada and Poland—that the presumption, in paragraph 1, of the continuity of reservations should be reversed. The Netherlands had made the