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Summary record of the 1273rd meeting

Topic:
Succession of States with respect to treaties

Extract from the Yearbook of the International Law Commission:-
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1273rd MEETING

Friday, 7 June 1974, at 10.5 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.

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]

(continued)

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 17

1. The CHAIRMAN invited the Special Rapporteur to introduce article 17, which read:

Article 17

Notification of succession

1. A notification of succession in respect of a multilateral treaty under article 12 or 13 must be made in writing.

2. If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification of succession shall:

(*a*) if there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;

(*b*) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(*c*) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary.

2. Sir Francis VALLAT (Special Rapporteur) said that article 17, which dealt with the mechanics of notification of succession, had not attracted any comments by Governments and appeared to be satisfactory and complete. He had no special remarks to make on the article.

3. The CHAIRMAN said that the question had been raised, in connexion with article 12, whether the definition of "notification of succession" in article 2 should not be expanded to specify that the notification must be made in writing.

4. Sir Francis VALLAT (Special Rapporteur) replied that in his view the appropriate place to deal with that point was in article 17, which stated, in paragraph 1, that the notification "must be made in writing". The definition of "notification of succession" in article 2 ought, if anything, to be shortened.

5. Mr. MARTÍNEZ MORENO said that article 17 was fully acceptable to him, but he wished to raise an important matter, which was dealt with in the commentary (A/8710/Rev.1, chapter II, section C) but should, in his view, be dealt with in the article itself.

6. Paragraph (6) of the commentary mentioned certain cases in which the notification of succession had been made not by the newly independent State itself, but by the predecessor State. In paragraph (7) the conclusion was reached that a notification of succession, in order to be effective, must emanate from the competent authorities of the newly independent State. It would be contrary to the principle of self-determination to take any other position, and he suggested that the matter should be made clear in the text of article 18, although the reference to articles 12 and 13 in paragraph 1 of article 17 already implied that the notification should emanate from the newly independent State.

7. Mr. RAMANGASOAVINA said he thought it was normal for a notification of succession to be made in writing. With regard to paragraph 2 of article 17, under which the representative of the State communicating the notification might be called upon to produce full powers if the notification was not signed by the Head of State, Head of Government or Minister for Foreign Affairs, it might perhaps be simpler to provide that in such a case he must produce full powers.

8. Sir Francis VALLAT (Special Rapporteur) said he would reflect on the points raised by the two previous speakers and, if necessary, make suggestions to the Drafting Committee.

9. The CHAIRMAN suggested that article 17 should be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.[1]

ARTICLE 18

10. The CHAIRMAN invited the Special Rapporteur to introduce article 18, which read:

Article 18

Effects of a notification of succession

1. Unless a treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 12 or 13 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 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 12, 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 treaty which was not in force at the date

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[1] For resumption of the discussion see 1293rd meeting, para. 25.

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.

11. Sir Francis VALLAT (Special Rapporteur) said that the question of a time-limit and the effect of retroactivity under article 18 had caused him much difficulty. After long reflexion, however, he had come to the conclusion that the article should be kept substantially unchanged and that any explanations needed should be given in the commentary.

12. In the oral and written comments by Governments, there had been no criticism of the basic principle of continuity of the legal nexus underlying the concept of retroactivity applied in article 18. That principle, as explained in paragraph (11) of the commentary (A/8710/Rev.1, chapter II, section C), was sustained by the Secretary-General's practice as a depositary. It was true that, as a depositary, the Secretary-General could not bind the parties, but since there had not been any objection to his consistent practice in the matter it could be said that, in effect, it constituted the practice of States. Any different approach would undermine much of the work the Commission had accomplished by building on the practice of the Secretary-General.

13. The effects of the operation of article 18 raised two related problems: first, that of the time element, since a newly independent State might delay making a notification of succession for a long time; and secondly, the practical difficulties resulting from retroactivity for the other States parties to the treaty. It was necessary to determine the nature and scope of the legal obligations of those other States during the period between the date of succession and the date of notification. The draft articles did not give an express answer to that question. The articles on provisional application seemed to indicate that during the interim period the treaty would not be binding on the other States parties; otherwise, there would appear to be no reason to require their consent for the purpose of provisional application.

14. On further reflexion, however, he had concluded that provisional application and the operation of article 18 constituted two different legal situations. When a notification was made, it would have the effects stated in article 18; that being so, the other States parties would be aware of the possibility of a notification being made with retroactive effect by the newly independent State, and it would be open to them to approach that State and urge it to make its position known. In the light of the reply received, or of the absence of a reply, the other States parties could either seek an arrangement by way of provisional application or continue to press the newly independent State to take a decision about the treaty; another State party could even ultimately inform the newly independent State that it assumed that it would not be participating in the treaty.

15. Those considerations showed that the Commission had been moving in the right direction when it had discussed the possibility of introducing the idea of a reasonable time-limit into article 12. The failure of the newly independent State to act within a reasonable time should deprive it of the benefit of retroactivity under article 18. Otherwise, if the newly independent State adopted an unco-operative attitude, another State party would be placed in an embarrassing position: if it wished to take action contrary to the terms of a treaty, it would have no other course open to it but to commit a breach of the treaty and await the reaction of the newly independent State.

16. For those reasons, he thought that the appropriate course was to keep article 18 basically as it stood, but to make provision for some satisfactory time-limit in article 12 and possibly also in article 13. In that connexion, he drew attention to the comments by the Netherlands Government, which favoured a time-limit that was both specific and short (A/CN.4/275/Add.1, para. 14). In fact, the one-year time-limit it proposed was the shortest period so far suggested.

17. The Swedish Government had, in effect, proposed the deletion of sub-paragraph (*c*) from paragraph 3. He thought that proposal should be rejected. As explained in his report (A/CN.4/278/Add.3, para. 317), the faculty conferred upon the newly independent State by that sub-paragraph was a reasonable one and there was no reason why it should be taken away. Besides, the draft articles should not be visualized as operating in a vacuum, but in the context of normal diplomatic relations. The faculty in question would normally be a convenience to all concerned.

18. As to the United Kingdom Government's suggestion regarding sub-paragraph (*b*) of paragraph 2, he believed it was based on some misunderstanding of the purpose of that sub-paragraph, as he had explained in his report (*ibid.*, para. 318). Sub-paragraph (*b*) had to restrict the option of the newly independent State, because of the provisions on "restricted" multilateral treaties contained in paragraph 3 of article 12. As to so-called "general" multilateral treaties, it was unnecessary to state the obvious fact that the date could be varied by agreement of all the parties to the treaty.

19. Mr. USHAKOV said he wished to draw attention to a contradiction between articles 17 and 18 and to a contradiction within article 18.

20. Paragraph 1(*a*) of article 18 provided that a newly independent State would "be considered a party" to the treaty on the "receipt by the depositary" of the notification of succession. Paragraph 3(*c*) of article 17, however, specified that the notification, if transmitted to a depositary, would be considered as received by the State for which it was intended "only when the latter State has been informed by the depositary". It was necessary to remove the apparent conflict between those two provisions.

21. The contradiction within article 18 was much more serious. Paragraph 1(*a*) provided that the newly independent State would "be considered a party" to the treaty on the "receipt by the depositary" of the notification of succession. In other words, the treaty was in force for that State as from the date of receipt of the notification by the depositary. Paragraph 2, on the other hand, provided that the treaty was "considered as being in force" in respect of the newly independent State "from the date of succession of States". Thus, according to paragraph 2, the newly independent State became a

party from the date of succession and not from the date specified in paragraph 1 (*a*). It was essential to remove that contradiction as well.

22. Mr. AGO said he thought article 18 raised almost insuperable difficulties. Apart from the possible contradiction between article 18, paragraph 1 and article 17, it should be noted that article 18, paragraph 2, reflected concern to ensure the continuity of treaties in a succession. Succession, if it really was a succession, should be automatic, but in the system of the draft articles it was made subject to a declaration of will by the newly independent State, which was justified on several grounds. In the absence of a notification of succession by that State, the treaties in question were deemed to be no longer in force. When a notification of succession was made, they were regarded, under article 18, as being in force from the date of the succession. It was important, however, to consider the other States concerned.

23. From the point of view of State responsibility for an internationally wrongful act, a newly independent State which, after the date of the succession, acted in a manner contrary to the provisions of a particular treaty, would not be in danger of incurring international responsibility; it need only refrain from making a notification of succession to that particular treaty. Other States parties to the treaty which acted in a similar manner would incur no international responsibility so long as no notification of succession had been made, but they could be held responsible retroactively for internationally wrongful acts as soon as a notification had been made.

24. The Special Rapporteur had tried to remedy that unacceptable situation by proposing the introduction of a reasonable time-limit for notification. In his (Mr. Ago's) view, that solution would nevertheless endanger the principle of the equality of States. It would be better to consider the application of the treaties as being suspended during the interim period.

25. Mr. YASSEEN said that the intertemporal law was very complicated. The main purpose of article 18 was to safeguard the interests of newly independent States. It was right that a State in that position should enjoy some freedom to choose the appropriate moment for making a notification of succession. At the same time, the difficulties that might be encountered by other States should not be ignored.

26. The solution suggested by the Special Rapporteur was hardly acceptable, because it would oblige newly independent States to take a decision within a fixed period, and that would constitute a sometimes unjustified limitation of their freedom. It would be better to provide that the date of entry into force of the treaty should be either the date on which the succession was notified to the depositary or to the other States, or some other date agreed by the States concerned.

27. Mr. KEARNEY said that the intertemporal question always raised serious problems. Article 18 was a very difficult article, especially in regard to its interconnexion with other articles.

28. The basic proposition embodied in the article was sound, namely, that the notification of succession constituted an affirmation of a pre-existing nexus, so it was logical that the treaty should be considered as having been in effect as from the date of succession. But while it was appropriate to accept that logical consequence of a succession of States, it would be wrong to ignore the practical effects of the period of uncertainty following a succession, which continued until the newly independent State made its notification.

29. In practice, few serious problems appeared to have arisen, though some instances could be quoted from the application of treaties on extradition and taxation. A possible reason for the rarity of actual cases was that the treaty provisions were often incorporated in the internal law of the territory to which succession of States related, and thus remained in effect during the interim period. Despite the lack of sufficient material on which to form a sound opinion, however, the Commission should bear in mind certain situations seriously affecting the rights of individuals which could occur in private law and could be affected by multilateral treaties. It was not possible to meet those situations simply by requiring the newly independent State to act within a reasonable time. Such a provision would simply introduce a further element of uncertainty, because of the difficulty of interpreting the word "reasonable".

30. He therefore suggested that the problem should be approached from a different angle, by introducing a provision on the following lines: "The treaty shall be considered as being in force from the date of notification of succession in respect of particular cases or situations which, under the internal law of any party or of the successor State, have been determined on the basis that the treaty was not in effect."

31. With a provision of that kind, a judgement rendered in a domestic court during the interim period would not be affected by a subsequent notification of succession, despite the retroactive effect of article 18. The same would apply to any financial or economic decision, such as decisions in matters of taxation, which relied on the assumption that the treaty was not in force. It would create extraordinary confusion if such judgements and decisions could be upset because several years later a notification of succession had been made.

32. Mr. ELIAS said that the Special Rapporteur had been right to suggest that article 18 should be left very much as it stood. He did not, however, support the Special Rapporteur's proposal that not only article 12, but also article 13 should be amended to provide for a time-limit on the period within which a notification of succession could be made (A/CN.4/278/Add.3, para. 319). It was with considerable hesitation that he had agreed, during the discussion on article 12, that the Drafting Committee should consider that idea; the proposal to extend it to article 13 as well would require further thought, not just by the Drafting Committee, but by the Commission itself. In any case, as a number of other speakers had pointed out, the difficult intertemporal question could not be settled either completely or satisfactorily by any such provision for a "reasonable" time-limit.

33. With regard to the apparent contradiction between paragraph 3(*c*) of article 17 and paragraph 1(*a*) of

article 18, he pointed out that the terms of the latter provision followed logically upon those of sub-paragraph (*b*) of article 78 of the Vienna Convention on the Law of Treaties.[2] He did not think there was any real contradiction, but the Drafting Committee could study the point.

34. He agreed with the Special Rapporteur that the United Kingdom suggestion regarding paragraph 2(*b*) of article 18 was based on some misunderstanding of the provision in question and should not be entertained. He also agreed with the Special Rapporteur that the Swedish proposal to delete sub-paragraph (*c*) of paragraph 2 should be rejected.

35. In conclusion, he supported the adoption of article 18 subject to any improvements in wording that might be introduced by the Drafting Committee and on the understanding that no provision for a time-limit would be included in it; that matter should be considered in connexion with article 12 alone.

36. Mr. MARTÍNEZ MORENO said that the idea of a specific time-limit had not been generally accepted as a possible remedy for the difficulties involved in article 18, though there appeared to be considerable support for the idea of a "reasonable time", which might at least help to reduce those difficulties. It would certainly be extremely difficult to find a comprehensive solution, but in the interests of fairness it was necessary to alleviate the difficulties which might arise for other States parties to a multilateral treaty if the newly independent State delayed making its notification of succession.

37. He therefore suggested that the other States parties should be exonerated from international responsibility for any failure to apply a treaty which they did not believe to be in force, but which later became retroactively effective as a result of a notification of succession.

38. The concern expressed by Mr. Ushakov was well founded. The provisions of paragraphs 1 and 2 of article 18 appeared to be seriously in conflict unless paragraph 1 was intended to refer to the date and not to the effects of the notification, in which case it should have been placed in article 17.

39. Mr. QUENTIN-BAXTER said that, since the Commission was trying to produce texts that would be acceptable to all and not merely to a majority of States, it would have to bear in mind the traditional attitudes even of minorities of States. The concept of continuing obligation or inheritance, for example, was traditional in the South Pacific. The notion of a reasonable time-limit would never have occurred to the States in that region, as they would believe that a legal solution could be found. In the vast majority of cases, when such a solution was found the other State or States concerned readily agreed to it. A time-limit was not found necessary and was indeed contrary to that tradition.

40. He had no reservations about the clean slate principle—the central principle adopted by the Commission—because it was basically consistent with world practice. The draft articles rightly embodied both the concept of continuing inheritance and that of the new State's freedom of choice. The inheritance concept was just as important to those who supported the clean slate principle as it was to others; it was valuable because of its world-wide acceptance in law-making and other general treaties.

41. As Mr. Kearney had said, although, notionally, treaties stopped for new States, those States inherited a framework of domestic law which, by and large, gave effect to many of the international obligations by which they had been bound before they had become States. If they had strong views about those obligations, they would change their law and abandon them, but in the vast majority of cases they would continue to use and build upon the framework as they had inherited it.

42. In the preceding articles, the notions of inheritance and choice had sometimes operated together. In the case of reservations, for example, most members believed that the successor State should be presumed to inherit its predecessor's reservations as well as participation in the treaty, but that it should at the same time be free to abandon those reservations or make new reservations to replace them. Most members did not believe that if the concept of choice was introduced, that of inheritance should be abandoned—that if a State was allowed to make new reservations, it must be presumed not to have inherited its predecessor's reservations.

43. The situation was somewhat similar under article 18, which allowed a new State to make a notification that had the true effect of succession and hence of continuity, or to specify that its notification would take effect from the time when it was received. The newly independent State would often choose the latter course, because it knew that in the interval it had not complied with the provisions of the treaty, perhaps for internal reasons. In most cases, however, no one would wish to question the claim of a new State to regard itself as a party to an international convention, even if its practice had at times fallen below the standard required by the convention.

44. Nevertheless, the Commission could not wholly ignore the practical problems which arose for other States parties to a treaty through uncertainty, particularly where private rights were affected or court judgements depended on the assumption that the treaty was not in force. A court could not suspend its judgement on the grounds that it could not ascertain whether a treaty was in force or not. It had to assume that the treaty was not in force unless there had been a notification to the contrary and that fact had been reflected in domestic law. The Commission should therefore amend the provision on notification. He was inclined to agree with those who believed that the problem could not be solved by merely introducing the test of reasonableness or by any general imposition of time-limits. That would not be in the tradition of many States.

45. For practical purposes, the Commission should try to provide for two types of situation. First, there was the case in which the practice of the new State was

[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. 300.

obviously inconsistent with the idea that it regarded itself as having succeeded to the treaty and had kept it in force from the time of succession. If a multilateral treaty depended on a framework of domestic law in each State party to it, and if the new State abrogated that law and continued for some time not to give effect to the treaty, other States observing the treaty obligations in their own domestic law would ordinarily regard such conduct by the new State as proof that it did not consider the treaty to be in force for it for the time being.

46. Secondly, there was the case in which the new State was unable to decide whether or not to succeed to the treaty and delayed its notification. The other States parties might then be allowed to take the initiative by asking the new State to declare its position in respect of the treaty. If the new State was still unable to do so, its succession would be regarded as taking effect from the date of notification, and would not have retroactive effect.

47. The Commission might consider amending article 18 along those lines. The new State would then be free to decide whether its notification should take effect only from the time when it was made or from a previous time, while other States parties would be entitled to object to the retroactive effect of notification in the cases he had mentioned. Some provision should be made for dealing with difficult cases. Third States would, and should, agree to considerable inequality in order to bring the present articles into force, but he thought the limits of their tolerance in regard to notification of succession had been reached.

48. Mr. TSURUOKA said he shared the Commission's desire to establish a fair balance between the interests of the newly independent State and those of the other States parties to a treaty. With regard to the idea of a "reasonable time", he favoured a specific period, as he had already said in connexion with articles 12 and 13.

49. As to paragraph 2(*c*) of article 18, which dealt with the case in which the notification of succession specified a later date than the date of succession for the entry into force of the treaty, he suggested that that provision should be redrafted on the lines of article 19, paragraph 2. Admittedly, that would not cover all possible cases, but it would certainly reduce the difficulties that might arise during the interim period.

50. Mr. USHAKOV compared article 18 with article 22, on the provisional application of multilateral treaties. According to article 22, the provisional application of a multilateral treaty between the successor State and another State party to the treaty required a notification by the successor State and the agreement of the other State party, whereas under article 18 that agreement was not required for retroactive application. Furthermore, whether the newly independent State applied a multilateral treaty provisionally or not, its situation was ultimately the same, once it had made a notification of succession; for the retroactivity provided for in article 18, paragraph 2, could take effect when the treaty had been applied provisionally in accordance with article 22. In such a case *de facto* retroactivity became *de jure* retroactivity.

51. Sir Francis VALLAT (Special Rapporteur) said the discussion seemed to suggest that the Commission should regard the principle of continuity as underlying article 18, without unduly stressing the principle of retroactivity. That would help to place the article in the context of State succession and recall the reason why paragraph 2 might have retroactive effect. There was nothing in the comments of Governments to discourage the Commission from adopting the doctrine of continuity as reflected in article 18.

52. The most difficult problem raised by the article was the hardship which doubts about succession might create for the other parties to a multilateral treaty, particularly in what had been called the "private law sector". Mr. Ushakov had suggested that the retroactive effect which followed from paragraph 2 of article 18 might be limited to cases in which a multilateral treaty was provisionally applied by virtue of article 22. Mr. Ago and Mr. Martínez Moreno, following a similar line of reasoning, had suggested limiting the responsibility of the other States parties to the treaty until notification of succession had been given by the newly independent State. The only direct objection to the retroactive effect of paragraph 2 had been raised by Mr. Yasseen, who was in favour of making the treaty take effect from the date of notification of succession.

53. Another solution suggested was some form of time-limit for notification. The majority of members were clearly not in favour of a fixed time-limit, but a requirement that notification should be given within a reasonable time in accordance with the provisions of articles 12 and 13 might ease the situation.

54. On the whole there had been little criticism of paragraph 2 in the quite extensive comments received from Governments or expressed in the Sixth Committee, and there was a tendency to consider that the hardship involved for the other parties to a treaty might be avoided by providing for some kind of time-limit.

55. The solution suggested by Mr. Quentin-Baxter for cases in which the behaviour of the newly independent State was obviously inconsistent with the maintenance of the treaty in force was attractive in principle, but would be very difficult to incorporate in article 18. His other suggestion was that unduly delayed notification of succession should not have retroactive effect. Some form of over-all time-limit seemed preferable to such half measures.

56. The CHAIRMAN, speaking as a member of the Commission, said he thought that the contradiction between paragraphs 1 and 2 of article 18 mentioned by Mr. Ushakov was only apparent. He agreed, however, that in article 17, sub-paragraph (*c*) of paragraph 3, which was based on article 78 of the Vienna Convention on the Law of Treaties, was different in character from sub-paragraphs (*a*) and (*b*). It might therefore be clearer if sub-paragraph (*c*) was not incorporated in paragraph 3, but made into a separate paragraph 4.

57. Sir Francis VALLAT (Special Rapporteur) said he thought the point raised by Mr. Ushakov about para-

graph 3(*c*) of article 17 had been adequately dealt with by Mr. Elias. The contradiction between paragraphs 1 and 2 of article 18 was indeed more apparent than real. The notion that a State might become a party to a treaty which could have retroactive effect was inherent in article 28 of the Vienna Convention on the Law of Treaties: the provision that a treaty should not have retroactive effect "unless a different intention appears from the treaty" implied that a treaty might have retroactive effect if it so provided. Article 18 dealt with just the kind of case that, by implication, was contemplated in article 28 of the Vienna Convention.

58. The CHAIRMAN suggested that article 18 should be referred to the Drafting Committee for further consideration.

It was so agreed.[3]

The meeting rose at 12.25 p.m.

[3] For resumption of the discussion see 1293rd meeting, para. 34.

1274th MEETING

Monday, 10 June 1974, at 3.10 p.m.

Chairman: Mr. Endre USTOR

Later: Mr. José SETTE CÂMARA

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

Question of treaties concluded between States and international organizations or between two or more international organizations

(A/CN.4/277; A/CN.4/279)

[Item 7 of the agenda]

INTRODUCTION BY THE SPECIAL RAPPORTEUR

1. The CHAIRMAN invited the Special Rapporteur to introduce his third report on treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/279), and article 1 of his draft.

2. Mr. REUTER (Special Rapporteur) first drew attention to the bibliography prepared by the Secretariat on the topic under study (A/CN.4/277), which contained an interesting selection of works.

3. He explained that the draft articles appearing in his third report attempted to extend and adapt the Vienna Convention on the Law of Treaties[1] to the particular sphere of treaties concluded between States and international organizations or between two or more international organizations. The similar attempts made with other topics also linked with the Vienna Convention—succession of States in respect of treaties and the most-favoured-nation clause—were already well advanced, and it was time for the topic under discussion also to assume the form of a draft of articles.

4. In drafting the articles, he had followed the Vienna Convention on the Law of Treaties very closely and had retained the order and numbering of the articles of that Convention. Of course, certain provisions of the Vienna Convention, such as article 5, could have no equivalent in the present draft, and in those cases the number had been omitted. In other cases, such as that of article 2, it had not been possible to reproduce all the paragraphs and subparagraphs systematically. On the other hand, it might perhaps be necessary to introduce articles into the draft which did not appear in the Vienna Convention; they would be numbered *bis*, *ter* or *quater* so as not to break the numerical correspondence between the two sets of articles so long as the Commission was working on them.

5. In his third report he had reduced the commentaries to a minimum, in response to the suggestions to that effect made in the Sixth Committee at the twenty-eighth session of the General Assembly.

6. The draft articles were very different from those which the Commission usually had to examine. In the present case he, as Special Rapporteur, must not depart from the Vienna Convention unless it was necessary to do so. In view of that rigid framework, he even had to disregard any new thinking that might have emerged since the adoption of the Vienna Convention in 1969. The preparation of the articles was therefore mainly a matter of drafting and most of the ten provisions proposed should not give rise to long discussions on matters of principle. Six of them raised drafting problems; three raised relatively simple matters of principle; and only one, article 6, raised an important point of principle.

7. The fact that members of the Commission had not sent him any written notes on his draft, as he had asked them to do, certainly did not mean that they fully approved of it.

ARTICLE 1

8. Introducing article 1, he said that he proposed the following wording:

Article 1

Scope of the present articles

The present articles apply to treaties concluded between States and international organizations or between two or more international organizations. Article 3(*c*) of the Vienna Convention on the Law of Treaties does not apply to such treaties.

9. The first sentence corresponded to article 1 of the Vienna Convention; it was only with some hesitation that he had added the second.

10. The term "treaty" had been preferred to the term "agreement", in order to conform to the spirit of the

[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.