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Summary record of the 1281st meeting

Topic:
Succession of States with respect to treaties

Extract from the Yearbook of the International Law Commission:-
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69. The time factor, which had been mentioned by Mr. Ushakov and Mr. Martínez Moreno, was a special question which would call for much reflection. Also linked with the question of time-limits was another problem he found rather troublesome, which had been mentioned by Mr. Quentin-Baxter: the possibility of the retroactive effect of a notification of succession after a period of provisional application. If that period was terminated, it would surely be unreasonable to allow the successor State to become a party to the treaty a year later with retroactive effect.

70. Another point was that raised by Mr. Calle y Calle in connexion with article 25 of the Vienna Convention, on provisional application. Since the Commission was using language parallel to that of the Vienna Convention, the interpretation of its draft articles should be on the same basis, but the language of article 25 would not seem to apply to multilateral treaties already in force. It was, of course, a matter for the Commission whether it wished, or was able, to provide for such cases.

71. The other questions of detail which had been raised were primarily drafting points. With reference to Mr. Ushakov's comment on article 12, he had already observed that if article 22 were regarded as providing for collateral agreements, there would be no basis for any conflict with article 12 and the question of the bilateral application of multilateral treaties would not arise.

72. The CHAIRMAN suggested that article 22 should be referred to the Drafting Committee.

It was so agreed.[4]

ARTICLE 23

73. The CHAIRMAN invited the Special Rapporteur to introduce article 23, which read:

Article 23

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.

74. Sir Francis VALLAT (Special Rapporteur) said that the discussion on article 22 had made any long discussion of article 23 unnecessary, but he would like to draw the Commission's attention to paragraphs 345 and 346 of his report (A/CN.4/278/Add.4), which contained his observations on the comments of the Zambian and United Kingdom Governments.

75. Mr. YASSEEN said he thought that article 23 met a need for symmetry, but did not deal with the same problem as article 22, of which it was the counterpart. It concerned the application of a general principle of international law, which affirmed that States were free to provide for the provisional application of a treaty as between themselves. He did not see anything in it which called for a discussion.

76. In his view, the merit of article 23 might be that it stressed the possibility of provisional application by reason of the conduct of States. He therefore considered that the article should be retained and that the question whether to replace the expression "the successor State" by "the newly independent State", should be considered in the Drafting Committee.

77. Mr. USHAKOV suggested that, since article 23 presented no problems of substance it should be referred to the Drafting Committee.

It was so agreed.[5]

The meeting rose at 12.50 p.m.

[4] For resumption of the discussion see 1295th meeting, para. 2.

[5] For resumption of the discussion see 1295th meeting, para. 13.

1281st MEETING

Thursday, 20 June 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

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

Succession of States in respect of treaties

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

[Item 4 of the agenda]

(continued)

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 24

1. The CHAIRMAN invited the Special Rapporteur to introduce article 24, which read:

Article 24

Termination of provisional application

1. The provisional application of a multilateral treaty under article 22 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 12, 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 23 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 month's notice unless a shorter period is prescribed by the treaty for notice of its termination.

2. Sir Francis VALLAT (Special Rapporteur) said that since a section on provisional application was to be included in the draft, an article providing for the termination of provisional application was obviously necessary.

3. Government comments on the article were extremely few. Those of the Swedish Government (A/CN.4/275), which applied to the whole section on provisional application, were really directed not so much against the articles it contained as against the clean slate doctrine. Thus they did not amount to a request for the deletion of article 24.

4. Two valid drafting points had been raised by the United Kingdom Government, which he had already discussed in connexion with article 22. In his report, he had proposed that they should be taken into account in article 24 as well (A/CN.4/278/Add.4, para. 350).

5. Mr. ŠAHOVIĆ, referring to sub-paragraphs (*a*) and (*b*) of paragraph 3, said that since paragraphs 1 and 2 distinguished between the period which might be agreed between the States concerned and reasonable notice of termination, the Drafting Committee should consider whether paragraph 3 (*a*) was really necessary.

6. Mr. YASSEEN said he thought sub-paragraph (*a*) of paragraph 3 was covered by sub-paragraph (*b*), which began with the words "in the absence of any agreement"; that left States free to agree on any period whatsoever.

7. The CHAIRMAN, speaking as a member of the Commission, drew attention to paragraph (1) of the commentary (A/8710/Rev.1, chapter II, section C), which stated that provisional application could be terminated under the general law of treaties in ways other than those specified in paragraphs 1 and 2 of article 24, and gave the example of the conclusion by the States concerned of "a new treaty relating to the same subject-matter and incompatible with the application of the earlier treaty". Other examples could be given, such as the expiry of a period fixed by a newly independent State for the provisional application of a bilateral treaty, which was the case mentioned in paragraph (1) of the commentary to article 23.

8. He therefore suggested that the words "*inter alia*" should be inserted after the word "terminates" in paragraphs 1 and 2 of article 24; that would indicate the existence of other possible cases of termination.

9. Article 24 did not deal with the commencement of provisional application. The idea seemed to be that it would start on the date of the succession of States; but since it was based on agreement between the parties, it was possible for the parties to agree that provisional application would not be retroactive to that date. The Commission should therefore consider introducing into article 24 a provision dealing with the commencement of provisional application; it could specify that provisional application would begin on the date of the succession of States unless otherwise agreed.

10. Mr. MARTÍNEZ MORENO supported the Chairman's proposal that the words "*inter alia*" should be inserted in paragraphs 1 and 2.

11. He was concerned about the fact that provisional application might continue for an unduly long time and thus affect the interests of other States. Consideration should be given to introducing a time-limit within which a newly independent State would have to decide whether to adopt the treaty finally or abandon it. Provisional application should not be allowed to continue indefinitely pending that decision.

12. Sir Francis VALLAT (Special Rapporteur) said he would reflect on the interesting points raised by the two previous speakers. The idea of dealing with the date of commencement of provisional application seemed logical in view of the detailed provisions on commencement in other parts of the draft. Nevertheless, since the situations covered in articles 22 and 23 involved an agreement between the States concerned, it might perhaps be best to leave the date of commencement to be agreed by those States and not to try to legislate on the subject.

13. The example mentioned by the Chairman, of termination resulting from a newly independent State's offer to apply a bilateral treaty provisionally during a fixed period, would appear to be covered by the reference to the terms of the agreement; there seemed to be no reason to make special provision for it.

14. The other example mentioned by the Chairman, that of the conclusion of a new treaty, raised some difficulties. As he saw it, the rule in article 24 ought to be recognized as a residuary rule—a fact which was made clear by the language of paragraph 3. But the case of conclusion of a new treaty raised a much deeper and larger question, which had recurred throughout the discussion of the draft articles, namely, their relationship with the general law of treaties and, in particular, with the Vienna Convention on the Law of Treaties.[1] His own assumption was that none of the provisions of that Convention should be written into the present draft, except where necessary having regard to the needs of a particular article.

15. That general position would have to be stated clearly, either in the general commentary to the draft or in the text of an article. Because of the difficulty of drafting such an article so that it could not be interpreted as having implications that were not intended, his present inclination was to explain the position in the commentary.

16. The various suggestions made on the wording of article 24 would be considered by the Drafting Committee.

17. Mr. RAMANGASOAVINA said that at the previous meeting he had raised the question whether the draft should provide for the possibility of provisional application becoming definitive application.[2] 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.

[2] See previous meeting, para. 53.

period of provisional application was a time of waiting, at the end of which the newly independent State might decide that it was in its interest to accept full succession to the treaty; there would be cases in which it would prefer to accept the whole treaty definitively rather than terminate its application. Neither the article under discussion nor any other provision in the draft seemed to provide for that possibility.

18. Sir Francis VALLAT (Special Rapporteur) said that there did seem to be, in article 24, a lack of liaison with the provisions of articles 12 and 13. The question of the relationship between provisional application and final acceptance of the treaty as being in force was a difficult one, which could be important in practice and had many implications for the draft. It would be carefully considered by the Drafting Committee.

19. The CHAIRMAN suggested that article 24 should be referred to the Drafting Committee.

It was so agreed.[3]

ARTICLE 25

20. The CHAIRMAN invited the Special Rapporteur to introduce article 25, which read:

Article 25

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 12 to 21 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 12, 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 12, 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 State party otherwise agree.

21. Sir Francis VALLAT (Special Rapporteur) said that article 25 was necessary, because it covered a phenomenon that was quite likely to occur.

22. The Netherlands Government (A/CN.4/275/Add.1) had raised the question of the inequality between the newly independent State and the other States parties—a question which had already been discussed in connexion with articles 12 and 13. His reaction, like that of the Commission, was that any attempt to reverse that apparent inequality would amount to reversing the clean slate doctrine, and since the Commission had decided to abide by that doctrine in the draft, article 25 should stand.

23. A special problem arose, however, in regard to article 25. Under its provisions, a treaty which had applied to only one part of what was later to become the newly independent State could be extended to the whole territory of that State, and that extension might well cause a substantial increase in the obligations of the other States parties. On reflection, however, he had decided not to recommend any change in article 25 on those grounds, for the reasons given in his report (A/CN.4/278/Add.5, para. 356) and bearing in mind that no other Government had taken up that point.

24. Sub-paragraph (*a*) contained two qualifications: first, that arising from the incompatibility test and, secondly, that expressed in the concluding provision "or the effect of the combining of the territories is radically to change the conditions for the operation of the treaty". On those points, there had been three different kinds of comment. The Spanish delegation in the Sixth Committee had strongly supported the second of those qualifications (*ibid.*, para. 353) and had even suggested that it should be extended to other articles of the draft. He had himself favoured the idea of introducing it into article 10, which had some elements in common with the case contemplated in article 25. The Netherlands Government had suggested that an umbrella article should be introduced into part I to provide for the possibility of invoking fundamental change of circumstances (A/CN.4/275/Add.1, para. 7). That proposal contained two ideas: first that the language at the end of sub-paragraph (*a*) of article 25 should be replaced by wording taken from article 62 of the Vienna Convention on the Law of Treaties; secondly, that the provision should be extended to cover all the articles of the present draft. The comments of the United Kingdom Government on sub-paragraph (*a*) (A/CN.4/275) were somewhat similar; it had critized the departure from the wording used in article 62 of the Vienna Convention (Fundamental change of circumstances).

25. As he saw it, sub-paragraph (*a*) of article 25 dealt with cases in which, unlike those covered by article 62 of the Vienna Convention, the time element was not present. The use of the short phrase "radically to change the conditions for the operation of the treaty", instead of the much stricter provisions of article 62 of the Vienna Convention, would therefore seem justified. The intention was that article 25 should apply a more flexible and wider test than the Vienna Convention. That approach seemed reasonable and he would therefore suggest retaining sub-paragraph (*a*) as it stood.

26. The United Kingdom Government had also criticized sub-paragraph (*b*) as possibly going beyond what was provided in article 29 of the Vienna Convention (Territorial scope of treaties). That article, however, qualified the rule that a treaty was binding upon each party "in respect of its entire territory", by the proviso "Unless a different intention ... is otherwise established". Sub-paragraph (*b*) of article 25 was thus consistent with the spirit, if not the letter, of article 29 of the Vienna Convention, and he saw no reason to alter it.

27. A more difficult point had been raised by the United States Government (A/CN.4/275), namely, the possibility of conflicts arising from the application of

[3] For resumption of the discussion see 1295th meeting, para. 16.

different treaties in two parts of the same State as a result of the operation of sub-paragraph (*b*). His own feeling in the matter was that the problems involved should be left to be dealt with by the newly independent State, which would have the choice of extending or restricting the application of the treaty. On balance, for the reasons given in his report (A/CN.4/278/Add.5, para. 362), he thought it wiser not to limit the scope of sub-paragraph (*b*), or delete it as suggested by the United States Government.

28. Mr. TAMMES said he did not favour the principle of the equality of all parties to a treaty, if that principle would mean the introduction of a system of objections available to all "other States parties".

29. The Commission should understand equality to mean bringing the newly independent State, as far as possible, into a position equal to that which it would have had if it had been independent and in possession of all the rights of a sovereign State at the time when the treaty had been concluded. A system of objections would frustrate that equality and, particularly, the purpose of part III, section 2, of the draft, which established the right of option. In that respect he fully agreed with the views of the Special Rapporteur.

30. There was, however, a more limited kind of inequality, or rather incongruity. Under article 25, a newly independent State formed from two or more territories would be free to choose to continue a treaty in force either for its entire territory or with the original territorial restriction mentioned in sub-paragraph (*b*). The other State party, on the other hand, would normally be bound for its entire territory, in accordance with article 29 of the Vienna Convention; it would thus never have enjoyed a free choice. Nor would the newly independent State itself enjoy a free choice if it acceded to the treaty instead of notifying succession.

31. As indicated in paragraph (11) of the commentary (A/8710/Rev.1, chapter II, section C), the Secretary-General, acting as depositary, had originally rejected that incongruity. That fact, combined with the government comments, particularly those of the United Kingdom, justified reconsidering the question whether sub-paragraph (*b*) should be retained. The difficulties indicated by the United States Government constituted an additional reason for reconsideration.

32. Examining article 25 in the light of the government comments, he was even more convinced than when he had discussed article 10, that it was necessary to include in the draft a general article on fundamental change of circumstances.[4] Both article 10 and article 25 dealt with the extension of the territorial scope of a treaty, but in article 10, the radical change of reciprocal rights and duties was not taken into consideration, whereas in article 25 it was.

33. In addition, the possibility would arise under the draft articles of concurrent objections by the other State party which found its interests threatened by an unexpected extension of the territorial scope of its treaty obligations. That State could, in the first instance, invoke a radical change under article 25, sub-paragraph (*a*) of the draft, as an objection to the operation of the extended treaty through succession of States. Then, after succession, the same State could invoke article 62 of the Vienna Convention against the treaty in force, on somewhat different grounds and by an entirely different procedure.

34. He thought that those disturbing questions had not been fully answered in the Special Rapporteur's analysis. Perhaps the introduction of a general article on the relationship between the present draft and the Vienna Convention on the Law of Treaties could provide a solution to the problem.

35. Mr. CALLE Y CALLE said that although the situations dealt with in article 25 were quite complex, its provisions were sufficiently clear. They established a general presumption of extension of the territorial application of the treaty, combined with the option for the newly independent State to restrict that application.

36. He shared the view expressed by the Spanish delegation in the Sixth Committee that the wording of the article was much too involved. In particular, the last clause of sub-paragraph (*a*) was somewhat ambiguous and could be taken to mean that the territories in question had been combined for the purpose of radically changing the conditions for the operation of the treaty. He therefore suggested that that clause should be amended to read: "... that the succession of States would be incompatible with the object and purpose of the treaty or that the conditions for the operation of the treaty have radically changed as a result of the combining of the territories".

37. Article 25 had a direct connexion with article 10, on transfer of territory; a newly independent State could be formed from two or more territories, one of which was transferred by another State. He therefore supported the Special Rapporteur's suggestion that an additional paragraph should be inserted in article 10 to deal with radical change in the conditions of operation of the treaty as an exception to the rule in that article (A/CN.4/278/Add.5, para. 358).

38. He believed that the difference in language between article 25, sub-paragraph (*a*) and article 62 of the Vienna Convention on the Law of Treaties was justified. The effects of draft article 25 were less profound than those of article 62 of the Vienna Convention; draft article 25 referred simply to the possibility of applying a treaty. He therefore supported the retention of article 25 as it stood.

39. Mr. PINTO said he agreed with article 25 and with the Special Rapporteur's comments on it. His only difficulty related to the presentation of the article, but it was more than a mere drafting problem.

40. He was not at all certain of the relevance of the qualification contained in the words "were not identical". A single treaty could be applied by a metropolitan State to two territories which later became two successor States. In a case of that kind, the various sub-paragraphs of article 25 could still apply. For example, the application of the treaty to the entire territory formed

[4] See 1268th meeting, para. 36.

by the two successor States could be incompatible with its object and purpose.

41. From the point of view of drafting, he found the words "the entire territory of that State" confusing and suggested that they should be replaced by the words "the newly independent State as a whole".

42. Lastly, he would like to know whether there was any reason for using the words "prior to the succession" at the end of sub-paragraph (*b*), instead of the usual formula "at the date of the succession".

43. Mr. EL-ERIAN congratulated the Special Rapporteur on his lucid analysis of the comments by Governments, in particular those of the United Kingdom and the United States.

44. With regard to the United Kingdom comment on the difference in language between sub-paragraph (*a*) of draft article 25 and article 29 of the Vienna Convention, he pointed out that there was a basic difference between the two articles. Article 29 of the Vienna Convention applied the subjective criterion of intention. The criterion in draft article 25, on the other hand, was an objective one, based on a radical change that had taken place in the conditions for the operation of the treaty.

45. The article was an elaborate one, but its presentation was adequate. The introductory paragraph contained a rule in the form of a presumption; the four sub-paragraphs which followed stated the exceptions.

46. In view of the comments made by certain Governments, there could be a temptation to change the wording of article 25, but he thought the Special Rapporteur had done well to resist that temptation and to recommend that the article be retained as it stood.

47. Mr. KEARNEY said that the point raised by Mr. Pinto was a very valid one. The question whether the treaties were not identical probably had limited relevance. Some of the examples given in the commentary to article 25 (A/8710/Rev.1, chapter II, section C), and particularly the complicated set of treaty relationships of Ghana on attaining independence, showed that in practice there was no great difference whether the treaties were identical or not.

48. Another valid point had been raised by Mr. Tammes, with regard to incongruity under the exception provided for in sub-paragraph (*b*) of article 25. There appeared to be no justifiable reason for making that exception to the general rule that the treaty applied in respect of the entire territory of the newly independent State. Sub-paragraph (*b*) established an unnecessarily wide distinction between a multilateral treaty and a bilateral treaty, for in the case of a bilateral treaty the consent of the two States concerned was necessary, under sub-paragraph (*d*), for an exception to the general rule.

49. The Commission had adopted the basic approach that the newly independent State had a unilateral right of choice as to becoming a party to a multilateral treaty; its unilateral decision could not be vetoed by any other State party to the treaty. Once the newly independent State had decided to apply the treaty, however, there was no reason why it should not apply it to the entire territory. Any restriction on territorial application should have a good reason; it should not be left to the discretion of the newly independent State to decide the scope of territorial application.

50. For those reasons, he urged the Commission to consider rewording sub-paragraph (*b*) if it was decided to retain it.

51. Mr. EL-ERIAN asked whether the Commission had had any reason, in 1972, for adopting the expression "radically to change" in sub-paragraph (*a*), instead of the expression "fundamental change" which was used in article 62 of the Vienna Convention. No explanation on that point was given in the commentary.

52. Mr. ŠAHOVIĆ asked why article 25 referred only to articles 12 and 21 and did not take into account the treaties contemplated in articles 22 to 24. That question did not appear to be answered in the commentary, and he saw no reason why article 25 should not extend to treaties applied provisionally.

53. He thought that sub-paragraph (*b*) ought to be reconsidered in the light of the comments made during the discussion, and that the Commission should not be bound by the decision it had taken when adopting the text on first reading. He did not find sub-paragraph (*b*) very clear, because the treaty in question was defined negatively, by reference to a treaty referred to in article 12, paragraph 3, which itself was not worded sufficiently clearly.

54. The commentary to article 25 only examined the practice and indicated the solution chosen by the Commission. Although he approved of that solution, he thought the commentary should give the Commission's reasons for adopting it. The new commentary to article 25 to be prepared in the light of the discussion could take account of a number of entirely pertinent observations. The Special Rapporteur's replies to them should form the basis of the new commentary.

55. Mr. USHAKOV said that the expression "under articles 12 to 21" in the introductory paragraph was too broadly inclusive; the only article to which it was necessary to refer was article 13, though reference to articles 14, 15 and 16 might also be envisaged. He would like the Special Rapporteur to consider whether the expression "which is continued in force" did not call for a reference to section 4, on provisional application.

56. The CHAIRMAN, speaking as a member of the Commission, said that the point made by Mr. Šahović and Mr. Ushakov concerning the possible need to include a reference to provisional application was a valid one. Obviously, a newly independent State could avail itself of the provisions of section 4, but he wondered whether that would not appear more clearly if the order of sections 4 and 5 were reversed.

57. He endorsed the point made by Mr. Pinto concerning identical treaties and treaties which were not identical. If both territories had belonged to States parties to the same general multilateral treaty, and if one of those States had acceded to the treaty with important reservations whereas the other had no reservations, should the treaties be considered identical or not identical?

58. Lastly, he hoped that the Special Rapporteur would give careful consideration to the relationship between the present articles and the Vienna Convention on the Law of Treaties.

59. Sir Francis VALLAT (Special Rapporteur), summing up the discussion, said that the most important point of substance raised had been in connexion with sub-paragraph (*b*), but speakers had perhaps lost sight of the fact that that sub-paragraph dealt primarily with notification of succession. Even if article 25 did not exist, there could still be a situation in the case of a newly independent State in which there was a legal nexus between part of its territory and a multilateral treaty. It would then be only natural to allow it to make a notification of succession with respect to the part affected by that nexus. But the introductory paragraph of article 25 stated that in such cases the treaty should be considered as applying in respect of the entire territory of the State. It was that provision which made sub-paragraph (*b*) appear to be an exception. In fact, however, it would correspond to the natural, rightful position of the State, so that it would be a mistake to deprive the State of the possibility of limiting its notification to that part of the territory for which the treaty was in force.

60. While appreciating the comments made by Mr. Kearney and Mr. Tammes, he thought that there should first be a general presumption that the entire territory was affected, and that the *status quo* should be maintained as in sub-paragraph (*b*). Views in the Drafting Committee might differ, but he suggested that for the time being sub-paragraph (*b*) should be retained.

61. He agreed with Mr. Calle y Calle that the phrase "effect of the combining of the territories" in sub-paragraph (*a*) was not an altogether happy one.

62. Mr. Pinto's comment concerning identical treaties and treaties which were not identical should be given further consideration by the Drafting Committee. He would prefer to retain the expression "the entire territory", but that was a minor point which could be considered later.

63. As to use of the expression "radically to change the conditions for the operation of the treaty" in sub-paragraph (*a*), he thought that it should be further clarified in some part of the commentary, perhaps in connexion with article 10, and that some explanation should be given why wording different from that of article 62 of the Vienna Convention had been chosen. He could see certain advantages in the use of the expression, if applied reasonably, because it was more flexible.

64. With regard to the question of provisional application, he thought that, as a matter of principle, a newly independent State should not be deprived of that possibility merely because it was formed from two or more territories. However, the use of the words "in force", in the first paragraph of article 25, would seem to exclude the provisional application of multilateral treaties by such newly independent States. The Drafting Committee should consider whether it might not be better to reverse the order of sections 4 and 5.

65. Mr. Ushakov had suggested that the reference to "articles 12 to 21" in the opening paragraph should be made more specific by singling out the exact articles concerned. That raised the problem of cross-references, which, on the basis of his own experience, he thought should be as broad as possible. In any case, that was a point to be considered by the Drafting Committee. The drafting of sub-paragraph (*b*), in particular, would call for careful consideration, since it was linked to article 12, paragraph 3. The commentary should also be expanded to include a new reference to article 13.

66. He agreed that there might be certain advantages in deleting the reference to treaties which were not identical, since such a reference only tended to make the draft more complicated. The fundamental problem was always to keep in mind the relationship between the present articles and the Vienna Convention, a matter to which he was sure the Drafting Committee would give its closest attention.

67. The CHAIRMAN, speaking as a member of the Commission, said that in his opinion other provisions, such as article 15 on reservations, also applied to the newly independent States referred to in article 25. He therefore suggested that since part III dealt with newly independent States, it should be introduced with some such wording as: "The following part applies to newly independent States as defined in article 2, paragraph 1 (*f*) and subject to certain rules in article 25 concerning newly independent States formed from two or more territories".

68. Sir Francis VALLAT (Special Rapporteur) said that the point could also be clarified by expanding the definition in article 2, paragraph 1 (*f*) to include a newly independent State formed from two or more territories. That would be another question to be dealt with by the Drafting Committee.

69. The CHAIRMAN suggested that article 25 should be referred to the Drafting Committee.

It was so agreed.[5]

The meeting rose at 12.40 p.m.

[5] For resumption of the discussion see 1295th meeting, para. 29.

1282nd MEETING

Friday, 21 June 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

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